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Report of the Director-General

Fifth Supplementary Report: Report of the tripartite Committee set up to examine the representation alleging non-observance by Chile of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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► I. Introduction

1. By a communication received on 4 May 2018, the Single Central Organization of Chilean Workers (CUT) made a representation to the International Labour Office under article 24 of the ILO Constitution, alleging non-observance by the Government of Chile of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
2. Convention No. 111 was ratified by Chile on 20 September 1971 and is still in force in that country.
3. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. In accordance with articles 1 and 2(1) of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Chile thereof, and brought the representation before the Officers of the Governing Body.
5. At its 334th Session (October–November 2018), the Governing Body declared that the representation was receivable and decided to set up a tripartite committee to examine the matter, composed of Mr Rodrigo Meirelles Gaspar Coelho (Government member, Brazil), Mr Guido Ricci (Employer member, Guatemala), and Ms Liliana Ocmin (Worker member, Italy).
6. The parties to the complaint expressed their interest in making use of the possibility granted by the Governing Body to engage in a voluntary conciliation procedure at national level in relation to the allegations submitted. To date, and despite several requests for information on the outcome of the conciliation process at national level, no response has been received from the parties. In these conditions and in view of the time that has elapsed since the initiation of the complaint, the Committee intends to examine the merits of the complaint.
7. The Government of Chile submitted its observations on the representation in a communication dated 7 June 2019.

8. The Committee met on 19 January and 9 February 2023 to examine the representation and adopt this report.

► II. Examination of the representation

A. The complainant's allegations

9. By a communication received on 4 May 2018, the CUT alleges that the Government of Chile failed to observe Articles 1 and 3(c) and (d) of Convention No. 111 in relation to the mass dismissal of officials on the grounds of political opinion.
10. More specifically, the CUT claims that the Government that took office on 11 March 2018 dismissed more than 500 officials and requested the resignation of senior managers, owing to the political orientation or opinion of those officials. According to the CUT, this constitutes an "arbitrary and discriminatory administrative practice".
11. First of all, the CUT alleges that the political nature of the dismissals is demonstrated by public statements made by several Government representatives. The CUT refers first to the electoral campaign prior to the presidential election of 19 November 2017, and states that the candidate who won the election expressed his intention to dismiss public officials and went into detail about his critical opinion of some public programmes and services and the role of officials.¹ The CUT also states that, in February 2018, the Jaime Guzmán Foundation, a body linked to the Independent Democratic Union party (UDI),² prepared instructions for dismissing the officials who did not have the trust of the future Government, which were primarily directed at future ministers and deputy ministers.
12. Furthermore, the CUT refers to several statements made after the change of Government and published in the media. In that regard, the CUT explains that only 18 days after the new Government took office, the National Association of Public Employees (ANEF) reported that there had already been over 200 dismissals in ministries (in addition to repeated requests for "voluntary resignations" made to high-level directors selected according to the standards of the Senior Civil Service), and that, on 2 April 2018, the ANEF met with the Minister of Labour to inform him of the dismissal of more than 300 officials. The CUT states that one day after this meeting, on 3 April 2018, the Minister and Secretary General of Government explicitly acknowledged that the 300+ dismissals of public officials had been due to the lack of commitment of the officials concerned to the new Government's political and social plan.³ The CUT also indicates that, similarly, in mid-April 2018, the leader of the UDI defended the mass dismissals, maintaining that all officials who do not share the same political leanings of the current Government should be dismissed.⁴

¹ The CUT refers to several events published by the media where the presidential candidate expressed his critical stance towards the role of public officials, such as the presidential debate of 6 November 2017, when he took the opportunity to provide examples of possible cutbacks to public programmes.

² The UDI is part of the presidential political coalition known as Chile Vamos.

³ The CUT cites the "Ahora Noticias" programme covering the statement of 3 April 2018 by the Minister and Secretary General of Government.

⁴ The CUT cites the *El Día* newspaper, which covered the statement by the leader of the UDI.

13. Secondly, the CUT points out that domestic law protects the right to non-discrimination ⁵ and that the reasons given in the communications concerning the dismissals bear no relation to the reality of the situation. In this regard, the CUT indicates that: (i) the administrative acts by which the workers' appointments were terminated set out reasons that do not reflect reality and were communicated with the objective of artificially satisfying the requirement to substantiate the administrative acts; (ii) most of the duties carried out by the dismissed workers have continued to be performed by new officials who are undertaking the same tasks; (iii) in general, the public services have not undergone genuine restructuring; (iv) the posts concerned have been filled by people who are politically aligned with the new government authorities; and (v) in general, all the workers were well qualified and had performed their work faithfully and effectively.
14. Lastly, the CUT indicates that, on 20 April 2018, the ANEF and its member associations from public institutions affected by the mass dismissals made a representation to the Office of the Comptroller-General of the Republic ⁶ to request that the oversight body take action with regard to the arbitrary and unlawful dismissals. The CUT alleges that, as of the date of submission of the complaint, more than 500 public servants had been dismissed.

B. The Government's reply

15. In its reply, the Government states first of all that, in its representation, the CUT did not refer to specific cases or provide any evidence of the alleged "arbitrary and discriminatory administrative practice".
16. Regarding the allegations pertaining to events before 11 March 2018 (the date on which the Government took office), the Government states that they concern statements made by persons who had no authority to bind the State, and even less authority to dismiss public officials. In this regard, the Government emphasizes that the statements made during this period must be understood in the context of a presidential campaign and can hardly be said to constitute non-observance of the Convention by the Government of Chile. It also indicates that the Jaime Guzmán Foundation is a private entity that is not part of the State, and therefore it is unjustified to link the State with a document that it has produced.
17. Regarding the allegations pertaining to events after 11 March 2018, the Government explains that the CUT does not indicate the specific form that the alleged "arbitrary and discriminatory administrative practice" based on political opinions took. The Government states that the CUT

⁵ The CUT refers to the third paragraph of article 19(16) of the Constitution of the Republic of Chile, under which: "Any discrimination that is not based on personal skills or capability is prohibited, although the law may require Chilean citizenship or age limits in certain cases"; and article 2 of the Labour Code, under which: "...Acts of discrimination are distinctions, exclusions or preferences based on race, colour, sex, maternity, breastfeeding and lactation, age, marital status, trade union membership, religion, political opinion, nationality, national extraction, socioeconomic situation, language, beliefs, trade union activities, sexual orientation, gender identity, affiliation, physical appearance, illness or disability or social origin, which are intended to nullify or impair equality of opportunity or treatment in employment and occupation.

However, any distinction, exclusion or preference based on the qualifications required for a given job will not be considered discrimination.

In the light of the foregoing and without prejudice to other provisions of this Code, offers of employment by an employer, directly or through a third party and by any means, that indicate that any of the conditions referred to in the fourth paragraph are an application requirement are acts of discrimination. ..."

⁶ In its reply to the representation, the Government states that the Office of the Comptroller-General of the Republic is an autonomous body with constitutional status, which is responsible for monitoring the legality of the actions of the Administration.

did not provide a list identifying the public officials or public servants who had been dismissed or refer to acts of tangible and specific discrimination against one or more specific persons.

18. In addition, the Government states that the CUT ignores the entire corpus of Chilean legislation, which complies with the provisions of Articles 1 and 3(c) and (d) of Convention No. 111. The Government presents an overview of the legislation that governs the recruitment and dismissal of public officials and public servants. In that respect, the Government states that the main types of employment in the public sector are: (1) the system of public officials (who may be either career officials or officials appointed on a discretionary basis), governed by the Administrative Statute;⁷ (2) the system of contractual public officials, governed by the Administrative Statute, Resolution No. 1 of the National Civil Service Directorate,⁸ and Circulars Nos 21 and 27;⁹ (3) the system applicable to fee-based public officials whose relationship with the State Administration is governed by their contracts and by the provisions of the Civil Code; and (4) the system applicable to certain public sector workers, governed by the provisions of the Labour Code.
19. The Government observes that the legislation applicable to the dismissal of public officials and public servants can vary considerably, depending on the case. Thus, the Government states that career officials have a right to employment security and that their contracts can be terminated only on specific grounds, an exhaustive list of which is provided in the Administrative Statute,¹⁰ while the legislation provides that, when there is a new government, the competent authorities have the right to remove senior public officials who were appointed on a discretionary basis.¹¹ Thus, according to the Government, the representation, insofar as it does not identify which officials were dismissed or which type of system applied to them, is insufficient in its presentation of the facts for an analysis on the merits.
20. Secondly, the Government maintains that contrary to the CUT's allegations, the present Administration has sought at all times to protect public officials and public servants. Regarding the number of dismissals, the Government maintains that, during 2018, there were indeed

⁷ Legislative Decree No. 29 of 16 June 2004, establishing the consolidated, coordinated and systematized text of Act No. 18.834 on the Administrative Statute ("Administrative Statute").

⁸ Resolution No. 1 of the National Civil Service Directorate of the Ministry of Finance, of 11 May 2017, which approves the general management and personnel development rules applicable to all public services under the authority it is granted in article 2(q) of the basic law on the National Civil Service Directorate, contained in article 26 of Act No. 19.882, of 11 June 2003, governing the new personnel policy for the public officials indicated ("Resolution No. 1 of the National Civil Service Directorate" and "Act No. 19.882 on the personnel policy for public officials").

⁹ Circular No. 21 of the Ministry of Finance, of 28 November 2018, containing general guidelines to heads of service on the procedure for the renewal of contracted personnel, and Circular No. 27 of the Ministry of Finance, of 21 December 2018, establishing a committee to monitor compliance with Circular No. 21 of 2018 ("Circulars Nos 21 and 28").

¹⁰ According to article 140 of the Administrative Statute, the employment relationship of a career official shall be ended only on the following grounds: (a) acceptance of resignation; (b) attainment of retirement, a pension or life annuity under a social security scheme, in connection with the public service concerned; (c) vacancy announcement; (d) removal from office; (e) elimination of the position; (f) end of the legal term of office; and (g) death.

¹¹ As regards the allegations concerning persons hired through the Senior Civil Service system, the Government specifies that officials appointed through this system, which was established by Act No. 19.882 on personnel policy for public officials, are directors appointed on a discretionary basis at the first and second hierarchical levels. The Government states that the Senior Civil Service system allows the authorities competent to appoint senior managers to request their resignation and emphasizes in that respect that, according to the Committee of Experts for the Application of Conventions and Recommendations: "[P]olitical opinion may in certain circumstances constitute a bona fide qualification for certain senior posts which are directly concerned with developing government policy." ILO, *Giving Globalization a Human Face*, Report III (Part 1B), International Labour Conference, 101st Session, 2012, para. 831.

dismissals, but that the numbers can be considered normal compared with those of previous periods.

21. More specifically, the Government notes with respect to the renewal of contracted personnel that: (i) the Ministry of Finance provided general guidelines to the heads of service (through Circulars Nos 21 and 27)¹² which highlight the objective way in which they should be applied; (ii) a committee has been established for monitoring compliance with Circular No. 21¹³ – to receive submissions from associations representing public officials and from the ANEF relating to the contract renewal procedure (without prejudice to the other means established by law); (iii) after four months of work, of the 1,226 cases submitted to the Committee, 742 cases were reviewed, and as a result, a total of 419 officials were fully reinstated in their positions and a further 323 were partially reinstated; and (iv) at the end of 2018, 98.98 per cent of contracted officials had their contracts renewed for 2019.
22. The Government also emphasizes that it constantly encourages dialogue and transparency on the issue of dismissals. It states that, at both the national and the regional levels, the current authorities have invited the various associations representing public officials to meetings in order to analyse the cases raised and find solutions in a collaborative manner. In particular, the Government indicates that, at the national level, a working group was established in June 2018 between the Government and the ANEF to analyse labour issues, with the participation of the Ministry of Finance and the Ministry of Labour. The Government states that, when it submitted its observations to the present Committee, the working group had met five times.
23. In addition, the Government reports on a dialogue between the Government and the Chamber of Deputies on the same subject. The Government states that the Ministry of the General Secretariat of the Presidency provided detailed statistics to the Chamber of Deputies on the number of early terminations and resignations between 12 March and 30 June 2018,¹⁴ and that, in 2019, the Undersecretary of Finance attended the Finance Committee of the Chamber of Deputies on three occasions in order to explain in detail the monitoring of compliance with Circular No. 21 on the procedure for the renewal of contracted personnel.
24. Lastly, the Government notes that the CUT mentions that the ANEF and its affiliated associations made a presentation to the Comptroller-General of the Republic without providing any details about its content or the response obtained. The Government states that it has no knowledge of any part of the presentation on which to base an analysis or comments. The Government emphasizes that, in cases where public officials or public servants consider that their statutory, civil or labour relations have been terminated on discriminatory grounds, they may bring their allegations before the courts of justice.

¹² See also footnote 6.

¹³ The Government states that the committee established to monitor compliance with Circular No. 21 was composed of the Undersecretary for Finance, the Deputy Director for Rationalization and Public Services in the Finance Directorate, the National Director of the Civil Service and three representatives of the ANEF.

¹⁴ The Government refers to Directive No. 1163 (D.J.L. (Legal and Legislative Division)) dated 30 July 2018, of the Ministry of the General Secretariat of the Presidency, sent to the President of the Chamber of Deputies, in response to Directive No. 5.641 of the Chamber of Deputies, dated 19 July 2018, which shows that the process of change in the Administration was normal and transparent.

► III. The Committee's conclusions

25. The Committee observes that, in its representation, the complainant organization alleges that, through the mass dismissal of officials on the grounds of political opinion, the Government of Chile failed to comply with Articles 1 and 3(c) and (d) of Convention No. 111, which provides that:

Article 1

1. For the purpose of this Convention the term **discrimination** includes--
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms **employment** and **occupation** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice--

...

- (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (d) to pursue the policy in respect of employment under the direct control of a national authority;

...

26. The Committee notes that the complainant organization alleges that, after the Government took office in 2018, more than 500 public officials were dismissed as a result of a discriminatory administrative practice. The Committee also notes that, according to the CUT, the political grounds for the alleged dismissals is demonstrated by the statements of several political figures during the presidential campaign and the weeks following the change of administration. The Committee also notes the allegations of the CUT that the workers concerned have been replaced by new officials who are politically aligned with the new government authorities.
27. The Committee notes that the Government emphasizes that the different legal systems applicable to employment in the public sector vary considerably, granting career officials a right to stability and authorizing the removal of senior public officials who were appointed on a discretionary basis, in the event of a change of administration (Act No. 19.882 on the personnel policy for public officials). According to the Government, given that the CUT does not identify the officials affected by the dismissals or report on which type of system applied to them, the legal merits of the representation cannot be analysed. Furthermore, the

Committee notes that the Government points out that officials who consider that their labour relations were terminated on discriminatory grounds may bring their allegations before the courts. The Committee also notes that, in its reply, the Government states that the political statements referred to by the CUT concern persons who had no authority to bind the State or to dismiss public officials.

28. The Committee also notes that the Government states that it has sought at all times to protect public officials. According to the Government, the Ministry of Finance provided general guidelines (Circulars Nos 21 and 27) for the renewal of contracted personnel, which highlight the objective way in which they should be applied. The Government also states that, at the end of 2018, 98.98 per cent of contracted officials had their contracts renewed for 2019. Lastly, the Government reports that it set up a committee for monitoring compliance with Circular No. 21, to receive submissions from associations representing officials relating to the renewal procedure of contracted public officials (and that, out of 1,226 cases presented before the Committee, 742 cases were reviewed, and as a result, a total of 419 officials were fully reinstated in their positions and a further 323 were partially reinstated), and a working group between the Government and the ANEF to examine labour issues.
29. Based on an analysis of the allegations and the Government's reply, the Committee notes that no information is provided on: (1) the total number of officials who were dismissed after the change of Government (indicating only that they were more than 500 at the time the representation was submitted); (2) the legal system that applied to such officials; (3) the political affiliations and activities of the officials affected by the alleged dismissals and of the officials who allegedly replaced them to perform the same duties; (4) whether the officials referred to by the CUT have brought the case of their dismissals before the judicial authorities (the CUT mentions a presentation to the Office of the Comptroller-General of the Republic, but does not report on the outcome thereof); and (5) whether the committee for monitoring compliance with Circular No. 21 has examined the cases raised in the representation.
30. Under these circumstances, while observing that in the context of the change of Government a number of statutory, civil and labour relations have been terminated – as stated by the Government in its conclusions – the Committee cannot verify that the dismissals referred to by the CUT result in a breach of equality of treatment of the officials affected on any of the grounds provided for in Article 1 of the Convention. Consequently, based on the information available to it, the Committee considers that the allegations do not constitute a violation of the obligations of the Government of Chile under Convention No. 111.
31. Lastly, observing that the Government states that it maintains a dialogue with the organizations representing public officials on the issue of the dismissals (in particular, reference is made to the establishment of the committee for monitoring compliance with Circular No. 21 on the procedure for the renewal of contracted personnel, which has resulted in the reinstatement of 742 officials, and to the establishment of a working group between the Government and the ANEF), the Committee welcomes the establishment of these forums for dialogue and trusts that they have encouraged the development of harmonious labour relations in the public sector.

► IV. The Committee's recommendations

32. **In the light of its foregoing conclusions, the Committee recommends to the Governing Body that it:**

- (a) approve the present report and, in particular, the conclusion formulated in paragraph 30; and**
- (b) make this report publicly available and close the procedure initiated by the representation made by the Single Central Organization of Chilean Workers (CUT).**

Geneva, 9 February 2023

(signed) Mr Rodrigo Meirelles Gaspar Coelho
Government member

Mr Guido Ricci
Employer member

Ms Lilian Ocmin
Worker member