Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Observations 2016

Regional file by country -

EUROPE

Albania

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

Article 2 of the Convention. Right to organize of foreign workers. With reference to section 70 of the Act on Foreigners (No. 108 of 2013), providing that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as nationals, the Committee had requested the Government to take all necessary measures to ensure that all foreign workers, whether with a permanent or temporary residence permit or without residence permit, can exercise trade union rights. The Committee notes the Government's position that articles 16(1), 46(1) and 50 of the Constitution of the Republic of Albania fully guarantee the rights of foreigners in this regard and that the Act on Foreigners provides foreigners with protection against any form of discrimination. ***The Committee requests the Government to confirm that all foreign workers, including those without a residence permit, may exercise trade union rights, and particularly the right to join organizations which defend their interests as workers. The Committee further requests the Government to provide information on foreign workers' exercise of this right in practice, and otherwise to take any necessary measures to ensure they can exercise these rights under the Convention.***

Article 3. Right of organizations to organize their activities and formulate their programmes. For a number of years, the Committee has been requesting the Government to take measures to: (i) amend section 197/7(4) of the Labour Code concerning sympathy strikes; and (ii) ensure that all public servants who do not exercise authority in the name of the State are able to exercise the right to strike.

The Committee notes with ***satisfaction*** that the Government informs that Act No. 136 of 5 December 2016 on some supplements and amendments to the Labour Code, amends article 197/7 to provide that sympathy strikes shall be lawful provided that it supports a legal strike.

The Committee further notes that the Government informs that Act No. 152/2013 on the civil servants provides for the right to join unions and professional associations and for the right to strike to civil servants except as otherwise provided by law. The Government indicates that in any case the right to strike is not permitted in relation to essential services of state activity. The Committee recalls in this regard that prohibitions to the right to strike, which curtail the right of unions to organize their activities to defend the interest of workers, may only be imposed in relation to public servants exercising authority in the name of the State, essential services in the strict sense of the term (the interruption of which would endanger the life, personal safety or health of the whole or part of the population) or in situations of acute national or local crisis (for a limited period of time and to the extent necessary to meet the requirements of the situation). The Committee observes that the list of essential services provided in article 35 of the Act on the civil servants includes services such as transport or public television, which may not be considered essential services in the strict sense of the term. ***The Committee requests the Government to indicate any further exceptions to the right to strike set out in the laws and to take any necessary measures to ensure that the legislation is amended in accordance with the abovementioned principles.***

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Article 1 of the Convention. Adequate protection of workers against acts of anti-union discrimination. In its previous comments, the Committee, while noting the remedies provided for in cases of anti-union discrimination in sections 146(3), 202(1), 181(4) and 146(3) of the Labour Code (compensation; fine; prior union consent; reinstatement of public administration employees), had regretted that, in the absence of special tribunals, it allegedly took three years to review such cases in court. The Committee had urged the Government to take all necessary measures to establish appropriate enforcement mechanisms without further delay and had requested information on the status of the legal initiative concerning arbitration. The Committee notes that the Government indicates that the Ministry of Justice is examining this issue and that a draft law on international arbitration is currently under consideration. ***Recalling that the existence of general legal provisions prohibiting acts of anti-union discrimination is insufficient unless they are accompanied by effective and rapid procedures to ensure their application in practice, the Committee urges the Government to take all necessary measures to ensure the expeditious set up and operation of adequate enforcement mechanisms. The Committee requests the Government to inform of any development in this regard and to provide detailed information on the practical application of the remedies for anti-union discrimination set out in the law, in particular the availability and use of any applicable enforcement mechanisms, such as labour courts, and the duration of proceedings.***

Article 4. Promotion of collective bargaining. Noting in its previous comments that under section 161 of the Labour Code, collective agreements may be concluded at enterprise or branch level, and that according to the Government no collective agreements at national level had yet been concluded, the Committee had asked the Government to pursue its efforts to make bargaining possible at the national level in conformity with the national law and practice, in particular by mobilizing tripartite forums such as the National Labour Council (NLC). The Committee notes that the Government states that promotion of collective agreements is a priority and that, in this context, a number of measures have been taken to improve the legal framework, including Act No. 136 of 5 December 2015 on some supplements and amendments to the Labour Code. However, the Government notes that further work and continued efforts are still needed to foster collective bargaining at all levels, including the national level. ***The Committee invites the Government to pursue its efforts to promote voluntary collective bargaining at all levels, including at national level, when the parties so desire, and recalls that it may avail itself of the technical assistance of the Office. The Committee requests the Government to provide information on any measures taken and their impact on the promotion of collective bargaining, as well as on the number of collective agreements concluded, specifying the level and percentage or number of workers covered.***

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Article 1 of the Convention. Prohibited grounds of discrimination. Legislative developments. The Committee notes with ***interest*** the adoption of Law No. 136/2015 which came into force in June 2016 and introduces amendments to the Labour Code. The Committee notes that section 9(2) prohibits discrimination in employment and occupation on a wide range of grounds that are already covered by section 1 of the Protection from Discrimination Law No. 10221 of 2010, and adds the grounds of disability, HIV/AIDS or union affiliation. The prohibition of discrimination covers access to employment, access to vocational training, and working conditions including termination of employment and remuneration (section 9(5)). In case of violations of section 9, the Committee notes that under new section 9(10), the burden of proof shifts to the employer once the plaintiff submits evidence upon the basis of which the court may presume discriminatory behaviour. The Committee further notes that new section 32(2) now defines and prohibits both quid pro quo and hostile environment sexual harassment. ***The Committee requests the Government to provide information on the application in practice of section 9 of the Labour Code, including on any activities carried out in order to raise awareness of workers, employers and their organizations, as well as of labour inspectors and judges on the new rovisions of the Labour Code protecting workers from discrimination in employment and occupation.***

Discrimination on the basis of political opinion. The Committee recalls that for a number of years, it has been expressing concern regarding the potentially discriminatory effect of "lustration" laws (Law No. 8043 of 30 November 1995 and afterwards Law No. 10034 of 22 December 2008) which provided for the exclusion of persons who had certain duties under the previous regime from serving in a broad range of public functions. The Committee also recalls that according to an amicus curiae opinion of the Venice Commission of the Council of Europe, aspects of the new "lustration" Law No. 10034 of 2008 were found to interfere disproportionately with the right to stand for election, the right to work and the right to access to public administration. The Committee notes with ***interest*** the Government's indication in its report that by Decision No. 9, dated 2 March 2010, the Constitutional Court of the Republic of Albania unanimously decided that the "lustration" Law No. 10034 of 2008 was unconstitutional and consequently without effect.

The Committee is raising other matters in a request addressed directly to the Government.

Armenia

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

The Committee notes the observations made by the Confederation of Trade Unions of Armenia (CTUA) and the observations of the Republican Union of Employers of Armenia (RUEA), both received on 30 September 2015.

Articles 3, 4, 5, 6, 7, 9, 12, 13, 15, 16, 17 and 18 of the Convention. Reform of the labour inspection system and effective exercise of labour inspection functions following the reorganization of the labour inspection services. In its previous comment, the Committee noted that during the ongoing labour inspection reforms up until 2011, planned inspections had been temporarily suspended. The Committee further noted the Government's indication that, following legal amendments in 2011, limitations on the number of labour inspection visits were introduced, in that: (i) inspection visits in workplaces categorized as high-risk would not be conducted more than once a year; (ii) inspection visits in workplaces categorized as medium risk would not be carried out more than every three years; and (iii) inspection visits in workplaces categorized as low-risk labour inspections would not be carried out more than every five years. In this respect, the Committee expressed the view that limiting the number of inspection visits to a specific number for a certain time period raises obstacles to the effective performance of labour inspection functions.

In reply to its request for further information on the labour inspection reform, the Committee notes the Government's indication in its report that the reform of the labour inspection system is ongoing. In this respect, the Committee refers to the recent merger of the State Labour Inspectorate and the State Sanitary and Epidemiological Inspection, as "State Health Inspectorate" under the Ministry of Healthcare, Decree No. 857 of 2013, as amended. In this context, the Committee also notes that Annex II of Decision No. 857 provides for the structural organization of the State Health Inspectorate with ten divisions, including one occupational safety control division and one labour legislation control division; and that section 8 of Decision No. 857 enumerates the various functions of the State Health Inspectorate, including the exercise of state hygiene and anti epidemic control functions. The Committee notes that the CTUA expresses concern that Decree No. 857 on the reorganizing of the labour inspectorate as a part of the Ministry of Health does not meet the requirements of *Article 4* of the Convention (organization of the labour inspection services under the control and supervision of a central authority) and *Article 9* of the Convention (association of duly qualified technical experts and specialists in the work of the labour inspectorate). The RUEA, for its part, observes that the reorganization and the repealing of Decree No. 1146 of 2004, which established the State Labour Inspectorate within the Ministry of Labour and Social Affairs, were adopted without preliminary discussions with the social partners. The RUEA also states that the State Health Inspectorate does not contribute to the application of the legal provisions concerning labour conditions or pursue the objective of defending workers' rights and that, as a result of these changes, the State Labour Inspectorate had not carried out any activities for almost two years. The RUEA also raises concerns related to article 19 of Law No. 254 of 2014 on Inspection Bodies providing that three years after the entry into force of this Law (that is, 27 December 2014), there will be a need to create a new inspectorate because the State Health Inspectorate of the Ministry of Health will terminate its activity.

In relation to the ongoing reform of the labour inspectorate, the Committee would like to emphasize that, whatever the form of organization or the mode of operation of the labour inspectorate, it is important that the labour inspection system functions effectively and that the principles of the Convention are respected. In this regard, it would like to recall, in particular, that *Articles 4* and *5(a)* of the Convention provide that the inspection system shall be placed under the supervision and control of a central authority and appropriate arrangements shall be made to promote effective cooperation with other control bodies. Furthermore, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of government and of improper external influences *(Article 6*); labour inspectors shall be recruited with sole regard to their qualifications and adequately trained to dispose of relevant capacities for the performance of their duties *(Article 7*); each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are involved in the work of inspection *(Article 9*); and the number, extent and quality of inspectors and inspections and the allocation of financial means *(Articles 10, 11* and *16)* shall be such as to ensure the effective application of the relevant legal provisions. Moreover, labour inspectors must be provided with the rights and powers provided by the Convention *(Articles 12, 13* and *17)* and must be bound by the obligations provided for in it *(Article 15).* According to *Article 3(1)* and *(2*), the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties.

Noting with concern the observations made by the RUEA on the absence of any labour inspection activity for almost two years, the Committee requests that the Government provide its comments in this respect. The Committee also requests that the Government provide detailed statistics on the number of labour inspection visits carried out since the delegation of functions to the State Health Inspectorate and the number of workplaces and workers covered by these visits in the different sectors (Article 16).

The Committee also requests that the Government reply to the concerns raised by the CTUA, and requests information on how the principles of the Convention are given effect to in the reorganized system. In this respect, it requests specific information on the delegation of supervision and control functions to a central authority for labour inspection functions (Article 4), as well as the budgetary and human resources allocated for labour inspection purposes (Articles 10 and 11). The Committee also requests clarification on whether all labour inspectors previously employed by the State Labour Inspectorate have been transferred to the newly created State Health Inspectorate, and whether inspectors assuming labour inspection functions have the necessary qualifications to carry out these duties and the nature of the training they receive for this purpose (Article 7). Noting that the functions relating to the control of working conditions and occupational safety and health are only two of the ten functions entrusted to the State Health Inspectorate, the Committee also requests that the Government specify how it ensures that the other functions entrusted to the State Health Inspectorate do not have a negative effect on the effective discharge of the labour inspectors' primary duties (Article 3(2)).

In view of the termination of the activity of the State Health Inspectorate in December 2017 in accordance with article 19 of the Law on Inspection Bodies (that is, three years after the entry into force of the Law), the Committee finally requests that the Government provide information on the proposed organization of the labour inspection services after that date. In this regard, the Committee strongly encourages the Government to ensure that any amendments to the national legal framework and practice concerning the organization of the labour inspection services do not introduce restrictions and limitations to labour inspection, and give effect to all the principles of the Convention.

Articles 19, 20 and 21. Annual reports on the work of the labour inspectorate. The Committee notes that, once again, no annual report containing the type of data and statistics set out in *Article 21* of the Convention, was submitted to the Office. The Committee nevertheless notes the information provided by the Government that clause 8(10)(s) of Decree No. 857-N provides that the labour inspectorate must draw up annual reports on its performance and present it to the Ministry of Healthcare. The Committee also notes the Government's indication that the report was presented to the RUEA and the CTUA for their opinions. ***The Committee once again urges the Government to take all necessary measures to ensure the preparation and publication by the central labour inspection authority of an annual report containing all the information required under Article 21 of the Convention and to communicate any progress made in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Armenia

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1 of the Convention. Work of equal value. Legislation. In its previous comments, the Committee asked the Government to amend section 178(2) of the Labour Code of 2004, which provides for "equal pay for the same or equivalent work", in order to give full legislative expression to the principle of the Convention, and to confirm that it applies to both basic salary and additional payments. The Committee welcomes that, pursuant to the amendment of the Labour Code in 2014, section 178(3) now states that "the salary shall comprise the basic salary and all additional salary paid by the employer to the employee for the performed work". However, the Committee notes that section 178(2) still only provides for "equal pay for the same or equivalent work". The Committee further notes the adoption on 20 May 2013 of Law No. HO-57-N on ensuring the equal rights of and equal opportunities for women and men, prohibiting different remuneration for the same or similar work, any change of salary (increase or decrease) or deterioration of employment conditions on the ground of sex (section 6(2)), which is narrower than the principle of equal remuneration for men and women for work of equal value set out in the Convention. The Committee recalls that the concept of "work of equal value" permits a broad scope of comparison, including, but going beyond, equal remuneration for "equal", the "same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraphs 672–675). ***Noting that section 178(2) of the Labour Code and section 6(2) of Law No. HO-57-N on ensuring the equal rights of and equal opportunities for women and men contain provisions that are narrower than the principle laid down by the Convention, the Committee asks the Government to take steps to amend these sections in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, so as to address situations where men and women perform not only the same or equal work but also different work that is nevertheless of equal value. The Committee asks the Government to provide information on the steps taken in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Austria

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

The Committee notes the observations of the Federal Chamber of Labour (BAK), which were attached to the Government's report.

Articles 1 and 2 of the Convention. Gender pay gap. In its previous comments, the Committee asked the Government to provide information on the implementation of the "Gender Equality in the Labour Market" National Action Plan in narrowing the gender pay gap. The Committee notes that, according to Eurostat, even if the gender pay gap narrowed, it still remains significant and was as high as 23 per cent in 2013. The Committee notes the Government's indication in its report that the government programme for 2013–14 provided for the continuation of the implementation of the "Gender Equality in the Labour Market" National Action Plan, which included measures concerning awareness raising on the advantages and disadvantages of full-time and part-time employment, income transparency, and the access of women to high-level jobs, with the aim of reducing the gender pay gap. In this regard, the Government refers to various measures adopted to reduce the structural factors contributing to the large gender pay gap, such as training courses to promote the access of women to non-traditional occupations; special assistance for those returning to work after a career break for family reasons; training courses to improve persons' qualifications; women's career centres to offer individual advice; the increase of childcare places, information campaigns to motivate men to take paternity leave, and the granting of a childcare subsidy in order to remove the obstacles to women working full time; as well as support for enterprises on promoting equality of opportunity for men and women. The Government also provides examples of measures adopted in the provinces in this regard. Furthermore, the Committee notes that, according to the 2015 report on the progress made in the implementation of the Council of Minister's decision of 2011 to raise the federal quota for women's participation to 25 per cent in the boards of enterprises in which the State has at least a 50 per cent share, women held 37 per cent of posts on the boards of 57 enterprises, 25 per cent or more in 44 enterprises, and 50 per cent or more in 24 enterprises in 2014. Only 13 enterprises were still below the 25 per cent target. ***While welcoming the measures taken by the Government, but considering the significant gender pay gap in 2013, the Committee requests the Government to continue to take measures to further reduce the gender pay gap, and to provide information on the results achieved and progress made. The Committee further requests the Government to provide up-to-date, comparable statistics on the remuneration of men and women, including sex-disaggregated data by industry and occupational category for the public and private sectors, so as to allow it to make an assessment of the evolution of the gender pay gap since 2013.***

The Committee is raising other matters in a request addressed directly to the Government.

Azerbaijan

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Article 4 of the Convention. Bipartite negotiations. Observing that pursuant to section 36(1) of the Labour Code (1999), collective accords (general, sectoral (tariff) and territorial (regional)) are concluded between the relevant executive authorities and trade unions at the appropriate level, the Committee had previously requested the Government to take measures, including of a legislative nature, in order to encourage and promote collective bargaining between trade unions and employers and their organizations. While noting that the Government points out that pursuant to section 36(2) of the Labour Code, as well as the definition of the term "collective accord" set out in section 3(7) of the Code, employers can also be a party to a collective accord, the Committee ***regrets*** that no measures had been taken to amend section 36(1) of the Labour Code. The Committee recalls that *Article 4* of the Convention is aimed at promoting free and voluntary bargaining between workers' organizations and an employer or employers' organization. ***The Committee is therefore bound to reiterate its previous request. It expresses the hope that the Government's next report will contain information on the measures taken or envisaged in this respect. The Committee reminds the Government that technical assistance of the Office remains at its disposal.***

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1 of the Convention. Work of equal value. Legislation. For the last 15 years, the Committee has been emphasizing that the principle of equal remuneration for men and women for work of equal value is not fully reflected in the national legislation. It has taken note of the general provisions of the Labour Code of 1999, and more particularly of section 16 which prohibits discrimination based on sex and sections 154 and 158 on minimum wages and the determination of wages. It has also noted that section 9 of the Law on Gender Equality of 2006 only provides for equal wages for men and women having the same qualifications who perform the same job of the same value in the same working conditions, which is narrower than the principle of the Convention. The Committee notes that two bills on draft amendments to the Labour Code have been submitted to the Office of the Prime Minister in September 2013, but that no amendment to fully incorporate the principle of the Convention into the national legislation has been proposed. The Committee is therefore bound, once again, to recall that the principle of equal remuneration for men and women for work of equal value laid down in the Convention not only encompasses the same work performed under equal conditions and with the same skills, but also allows for a comparison between jobs that are of an entirely different nature, but which are nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraphs 673 and 677).

The Committee further notes with ***concern*** that according to the statistical information available from both the National State Statistical Committee and the United Nations Economic Commission for Europe, the gender pay gap in relation to monthly earnings has grown considerably from 41.4 per cent in 2009 to 53.9 per cent in 2015. Referring to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee takes note of the persistent occupational gender segregation in the labour market, whereby in 2015, women represented 76.6 per cent of the persons employed in health and social services and 71.4 per cent of the persons employed in education, with both sectors reporting average monthly salaries below the national average. On the contrary, sectors characterized by the highest monthly salaries, such as mining and finance and insurance, are those where women were less represented (women representing respectively 13.2 per cent and 32.9 per cent of the employees in these sectors). Taking note of the Government's indication that women are giving preference to work in the health and social services sector and in education, the Committee recalls that, when adopting measures to address wage disparities between men and women, in order to ensure that "female jobs" are not being undervalued for the purposes of wage rate determination it is important to examine and take into consideration the underlying causes of gender pay gaps such as gender-based discrimination, gender stereotypes relating to the aspirations and abilities of women and traditional assumptions concerning their role in the family and society, or occupational segregation of women into lower paying jobs or occupations (see 2012 General Survey, paragraphs 712–713). ***The Committee urges the Government to take the necessary measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value and to ensure that measures are taken to implement this principle in practice, including through collective agreements. The Committee also requests the Government to provide information on the specific measures taken, in collaboration with employers' and workers' organizations, to reduce the gender pay gap, in general and more particularly in sectors where such gaps are substantial, as well as information on any obstacles encountered. Recalling that pay inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee requests the Government to take measures to examine and address the underlying causes of the wide and growing gender pay gap, and to encourage the participation of girls and women into a wider range of training and job opportunities at all levels, including sectors and positions in which they are currently absent or under-represented. The Committee requests the Government to provide statistical data on the distribution of men and women in the different sectors of economic activity, occupational categories and positions and their corresponding earnings, both in the private and public sectors.***

The Committee is raising other matters in a request addressed directly to the Government.

Azerbaijan

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Articles 2 and 3 of the Convention. Equality of opportunity and treatment between men and women. For a number of years, the Committee has been requesting the Government to take effective measures to address the significant occupational gender segregation in the labour market, and to improve women's participation rates in sectors or occupations in which they are under-represented. The Committee notes the Strategy "Azerbaijan: Vision 2020", approved by Presidential Decree on 29 December 2012, pursuant to which the Government shall take measures to create equal opportunities for women and men in the labour market, promote women at work and expand their opportunities to occupy leading positions, and adopt a national action plan on gender equality (section 7.4). The Government indicates in its report that as a result of the State Programme for the Implementation of the Employment Strategy for 2011–15, approved by Presidential Decree No. 1836 on 15 October 2015, measures have been carried out to increase women's employability and to foster women's entrepreneurship and self-employment. The Government also indicates that from January 2014 to June 2015, 5,565 persons were enrolled in vocational training, of which 46.2 per cent were women. While welcoming these measures, the Committee notes, however, from the information made available by the State Statistical Committee, the persistent and growing occupational gender segregation in the labour market. It notes, in particular, that, in 2015, most women continued to be employed in low-paid sectors such as health and social services (76.6 per cent against 72.7 per cent in 2011) and education (71.4 per cent against 67.2 per cent in 2011), and represented only 19.7 per cent of private entrepreneurs, as of 1 January 2016. The Committee further notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at: (i) the persistent patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in society which undermine women's representation in paid employment; (ii) the stereotypical choices of educational fields which translate in the concentration of women in traditionally female dominated professions and the lower admission rate of women compared to men to undergraduate study programmes; (iii) the difficulties encountered by women in gaining access to credit owing to traditional stereotypes of the role of women; and (iv) the limited access by rural women to land and related resources and to economic opportunities (CEDAW/C/AZE/CO/5, 12 March 2015, paragraphs 20, 28, 34 and 36). ***The Committee therefore urges the Government to address effectively and without delay gender stereotypes and traditional assumptions regarding women's aspirations and capabilities which result in occupational gender segregation, and to adopt specific measures to improve the participation rates of women in those economic sectors and occupations in which they are under-represented, including by encouraging girls and young women to choose non-traditional fields of studies and career paths and enhancing women's participation in vocational training courses leading to employment with opportunities for advancement and promotion. It requests the Government to provide information on the results achieved by any measures taken to this end, including in the framework of the State Programme for the Implementation of the Employment Strategy for 2011–15 and the Strategy "Azerbaijan: Vision 2020", in accordance with Article 3(f) of the Convention. The Committee further asks the Government to indicate if a national action plan on gender equality has been developed, in collaboration with employers' and workers' organizations, and provide a copy of such plan once adopted.***

Exclusion of women from certain occupations. Since 2002, the Committee has repeatedly raised concerns regarding the prohibition of the employment of women in certain jobs, pursuant to section 241 of the Labour Code, as well as the extensive list of hazardous workplaces and occupations which are prohibited for women by virtue of Decision No. 170 of 20 October 1999. It notes the Government's indication that, having regard to the requirements of the Convention, work is still ongoing in order to repeal the list of occupations from which women are excluded, and a bill has been drafted to amend section 241 of the Labour Code. ***The Committee urges the Government to step up its efforts to repeal without delay the list of occupations for which women are excluded, and to ensure that special protective measures are strictly limited to protecting maternity and not aimed at protecting women generally because of their sex or gender, based on stereotyped assumptions about their capabilities and appropriate role in the family and society. The Committee requests the Government to provide information on any progress made in this regard.***

Article 3(d). Public sector. The Committee notes from the data collected by the State Statistical Committee that out of 31,123 public officials, only 29.2 per cent were women, as of 1 January 2016. Of those, only 3.8 per cent were employed in the "superior 3 classifications"; 56.4 per cent in the "4 to 7 classifications"; and 39.7 per cent in the "supplementary posts" of the public service. Furthermore, women represented only 12 per cent of the judges in 2015. The Committee recalls that the Convention requires the State to pursue the national equality policy in respect of employment under the direct control of a national authority *(Article 3(d)*). ***The Committee requests the Government to take measures to improve the representation of women in the judiciary and in public service, including in higher-level and decision-making posts, and to provide information on the results of the actions taken and progress made in this respect. The Committee requests the Government to include statistical information, disaggregated by sex, on the distribution of men and women in the public sector and the judiciary.***

Equal opportunity and treatment of ethnic and national minorities. Since 2005, the Committee has repeatedly raised concerns regarding discrimination faced by members of ethnic minorities in the fields of employment and education, and had requested the Government to indicate the measures taken or envisaged to promote equality of opportunity and treatment of members of the different ethnic minorities. The Committee notes with ***regret*** that the Government once again does not provide any information in this regard. It notes that, in its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights expressed concern that minorities, particularly the Lezghin and the Talysh populations, continue to be the victims of widespread discrimination, in particular in employment (E/C.12/AZE/CO/3, 5 June 2013, paragraph 8). It further notes that, in its March 2016 report, the European Commission against Racism and Intolerance (ECRI), while welcoming the Government's efforts to improve the historical minorities' access to public services and to the labour market, indicated that many minorities inhabiting rural and mountainous areas still suffer from higher degrees of poverty and below-average education services, this being detrimental to access to education for children belonging to minorities. ECRI also indicated that several thousand ethnic Azerbaijanis originating from Georgia and other former Soviet republics were still stateless and that Roma communities living in remote areas were lacking basic legal documentation, which resulted in an extremely vulnerable socio-economic situation without access to the education system (CRI(2016)17, 17 March 2016, paragraphs 56, 57 and 58). The Committee recalls that a national policy to promote equality of opportunity and treatment, as envisaged in *Articles 2* and *3* of the Convention, should include measures to promote equality of opportunity and treatment of members of all ethnic groups, including non-nationals, with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment (2012 General Survey on fundamental Conventions, paragraphs 765 and 777). ***The Committee urges the Government to provide, without delay, detailed information on the specific measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic and national minorities and stateless persons, in education, vocational training and employment. Recalling the importance of developing means to assess the progress made in the implementation of the national policy to promote equality, including studies and surveys, the Committee requests the Government to collect and analyse information on the situation of ethnic and national minorities in the labour market, as well as on the impact of the measures previously implemented to ensure their effective protection against discrimination with respect to access to education, vocational training and employment. The Committee requests the Government to provide such information without delay.***

The Committee is raising other matters in a request addressed directly to the Government.

Belarus

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC) received on 1 September 2016 on the application of the Convention. It further notes the observations submitted by the Belarusian Congress of Democratic Trade Unions (BKDP) received on 31 August 2016 alleging violations of this Convention in law and in practice. The Committee also notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

As a general point, the Committee notes with ***interest*** that a tripartite activity on collective labour dispute resolution mechanisms organized by the ILO in Minsk in February 2016 allowed for an open discussion on the existing arrangements and possible new mechanisms, including in the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council). The Committee notes the Government's indication that ILO tripartite activities carried out in Belarus following the direct contacts mission in 2014 had a positive impact on the social partners and, in particular, on the relations between various trade union groups. Further in this connection, the Committee welcomes the Government's indication that a training course on international labour standards for judges, lawyers and legal educators is planned to take place with ILO support in the first half of 2017. ***The Committee requests the Government to provide information on the outcome of this activity.***

Article 2 of the Convention. Right to establish workers' organizations. The Committee recalls that in its previous observation, it had urged the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. While noting the Government's indication that there had been no cases of refusal to register trade unions or their organizational structures, the Committee recalls that the BKDP had previously indicated that, faced with many obstacles in this respect, independent trade unions generally had been discouraged from seeking registration, despite the widening of possibilities as to the kind of premises which could satisfy the legal address requirement. The Committee ***deeply regrets*** that the Government's latest report does not indicate any measures taken to address this concern, including through the amendment of Presidential Decree No. 2, its rules and regulations, as recommended by the Commission of Inquiry. ***The Committee once again urges the Government to assess, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice and requests the Government to indicate all progress made in this respect.***

Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the BKDP, the Belarusian Independent Trade Union (BNP) and the Radio and Electronic Workers' Union (REP) to hold demonstrations and public meetings. The Committee had urged the Government, in working together with the abovementioned organizations, to investigate all of the alleged cases of refusals to authorize the holding of demonstrations and meetings, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. The Committee notes the latest allegations submitted by the BKDP regarding a video posted on YouTube showing the activists of the Women's Network of the Independent Union of Miners (NPG) protesting by the entrance to the NPG office against the raising of the retirement age. The participants were summoned to the Soligorsk police station and charged with a violation of the Administrative Code. On 17 May 2016, the court determined the video to be an unauthorized picketing, found the participants guilty and imposed a penalty in the form of an administrative warning. Also in May 2016, the Polotsk Court found Mr Victor Stukov and Mr Nikolai Sharakh, trade union activists of the BNP union at "Polotsk-Fiberglass" enterprise, guilty of participating in unauthorized picketing and imposed fines amounting to €250 and €300, respectively. According to the BKDP, trade unionists were protesting in the city centre against violations of labour legislation at the enterprise and against Mr Sharakh's dismissal. The Committee ***deeply regrets*** that the Government has failed to provide its comments on the new allegations and to reply to all outstanding allegations of refusal to grant authorization for demonstrations, nor has it provided any information on the steps taken to investigate the cases of refusal with the organizations concerned. ***The Committee urges the Government, once again, to work together with the abovementioned organizations to investigate these cases, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. It requests the Government to provide information on the measures taken in this regard.***

In this connection, the Committee recalls that it has been requesting the Government for a number of years to amend the Law on Mass Activities. It ***deeply regrets*** that the Government provides no information on the measures taken in this regard. It further ***deeply regrets*** that no measures have been taken to amend Presidential Decree No. 24, which requires previous authorization for foreign gratuitous aid and restricts the use of such aid. ***The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and Decree No. 24 and requests the Government to provide information on all measures taken in this respect.*** The Committee considers, in particular, that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular, in view of the apparent (financial) burden that is placed on trade unions to ensure the law and order during a mass event. ***The Committee invites the Government to avail itself of ILO technical assistance in this respect.***

The Committee recalls that it had previously requested the Government to indicate the measures taken to amend the following sections of the Labour Code as regards the exercise of the right to strike: sections 388(3) and 393, so as to ensure that no legislative limitations can be imposed on the peaceful exercise of the right to strike in the interest of rights and freedoms of other persons (except for cases of acute national crisis, or for public servants exercising authority in the name of the state, or essential services in the strict sense of the term, i.e. only those, the interruption of which, would endanger the life, personal safety or health of the whole or part of the population); 388(4) so as to ensure that national workers' organizations may receive assistance, even financial, from international workers' organizations, even when the purpose is to assist in the exercise of freely chosen industrial action; 390, by repealing the requirement of the notification of strike duration; and 392, so as to ensure that the final determination concerning the minimum service to be provided in the event of disagreement between the parties is made by an independent body and to further ensure that minimum services are not required in all undertakings but only in essential services, public services of fundamental importance, situations in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population, or to ensure the safe operation of necessary facilities. The Committee ***regrets*** that no information has been provided by the Government on the measures taken to amend the abovementioned provisions affecting the right of workers' organizations to organize their activities in full freedom. ***The Committee therefore encourages the Government to take measures to revise these provisions, in consultation with the social partners, and to provide information on all measures taken or envisaged to that end.***

While duly recognizing the efforts made by the Government, the Committee emphasizes that much remains to be done in order to implement in full all of the Commission of Inquiry's recommendations. ***It encourages the Government to pursue its efforts in this respect and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.***

Belarus

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes the report of the direct contacts mission (DCM) which visited the country in January 2014 with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. The Committee also notes the 379th Report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC) received on 1 September 2016 on the application of the Convention. It further notes the observations submitted by the Belarusian Congress of Democratic Trade Unions (BKDP) received on 31 August 2016 alleging violations of the Convention in practice.

Articles 1–3 of the Convention. Adequate protection against acts of anti-union discrimination and interference. The Committee recalls that it had previously noted with concern numerous allegations of anti-union discrimination, including discriminatory use of fixed-term contracts, and interference, threats and pressure put on workers to leave their unions and urged the Government to examine, in the framework of the Council for the Improvement of Legislation in the Social and Labour Sphere (the tripartite Council), the issue of effective protection against acts of anti-union discrimination in law and in practice, in general, as well as all of the outstanding allegations of anti-union discrimination and interference, in particular. In this respect, the Committee notes from the DCM report that it had received information to the effect that "all complaints of violations of trade union rights … were properly and timely investigated either by the prosecutors or dealt with by the courts".

The Committee notes new allegations of dismissals, non-renewal of contracts and interference submitted by the BKDP. The BKDP refers, in particular, to the cases of Mr Nikolai Sharakh and Mr Anatoly Potapovich, whose contracts were not renewed, and the dismissal of Ms Oksana Kernozhitskaya and Mr Mikhail Soshko. It further alleges that the management of the JSC Belaruskali promotes the primary trade union affiliated to the Federation of Trade Unions of Belarus (FPB) at the expense of the BKDP-affiliated union and pressures the members of the latter to leave the union. According to the information provided by the BKDP, the case of Mr Potapovich was examined by the court, which decided against his reinstatement. The Committee notes the Government's indication that the case of Mr Sharakh was discussed by the tripartite Council, which concluded that Mr Sharakh's contract was not renewed on the basis of his written request indicating that he wished to retire. The Committee ***regrets*** that no information has been provided by the Government on the remaining allegations. ***The Committee requests the Government to provide its comments thereon.***

The Committee welcomes the information provided that on 25 February 2016 a tripartite seminar on mechanisms for dispute resolution and mediation was held in Minsk with ILO assistance, which, according to the Government, gave rise to an exchange of opinions concerning the treatment of labour disputes under the existing national system and possible effective new mechanisms, including the tripartite Council. ***The Committee expects that the public authorities, in particular the Ministry of Justice, the Office of the Prosecutor-General and the judiciary, together with the social partners, as well as other stakeholders (for example, the Belarusian National Bar Association) will continue working together towards building a strong and efficient system of dispute resolution which could deal with labour disputes involving individual, collective and trade union matters. The Committee invites the Government to take advantage of ILO technical assistance in this regard.*** Further in this connection, the Committee welcomes the Government's indication that a training course on international labour standards for judges, lawyers and legal educators is planned to take place with ILO support in the first half of 2017. ***The Committee requests the Government to provide information on the outcome of this activity.***

Article 4. Right to collective bargaining. The Committee recalls that its previous comments concerned the issue of collective bargaining at the enterprise level where unions affiliated to the FPB and the BKDP were active and, in particular, the allegation that, on the one hand, the FPB primary trade unions refused to bargain collectively alongside and co-sign collective agreements with primary trade unions of the BKDP and, on the other, employers refused to bargain with a view to signing a second collective agreement with minority unions.

The Committee notes the Government's indication that following the recommendation of the DCM, in May 2015, the ILO, together with the Government and the social partners, held a tripartite seminar in Minsk on "Collective Bargaining and Cooperation at the Enterprise Level in the Context of Pluralism". On the basis of the conclusions reached by the seminar participants, the tripartite Council agreed on a collective bargaining procedure at enterprises with more than one trade union and unanimously endorsed its inclusion in a General Agreement between the Government and the national organizations of employers and trade unions for 2016–18. The Committee notes with ***interest*** that the General Agreement for 2016–18 contains a provision on the collective bargaining procedure at enterprises with more than one union. Pursuant to this provision, a single body comprising representatives of all unions active at an enterprise negotiates a collective agreement to which all trade unions can become a party.

The Committee notes the BKDP allegation that this procedure was not respected by the management of a glass fibre company in Polotsk, an enterprise producing tractor parts in Bobruisk and a company producing tractors in Minsk. ***The Committee requests the Government to provide its comments thereon.***

Belarus

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Articles 1 and 2 of the Convention. Gender wage gap. For a number of years, the Committee has been asking the Government to adopt measures in order to address the persistent gender wage gap. The Committee notes from the statistics provided by the Government that even though the gender wage gap narrowed from 25.5 per cent in 2013 to 23.5 per cent in 2014, it still remains significant. The Committee further notes the persistent gender wage gaps in certain sectors: for example, in 2014 women's average monthly wage was 74.6 per cent of that of men in industry, 88.4 per cent in trade and commerce and 86.6 per cent in health services. The Government indicates in this regard that the gender wage gap is caused by the fact that women traditionally choose to work in non-industrial sectors, while men work in those areas of the economy that involve hazardous and dangerous working conditions and a higher level of pressure, and therefore receive higher wages. The Committee further notes that, according to the World Bank report "Poverty Reduction and Economic Management Unit, Europe and Central Asia Region" of 2014, horizontal and vertical gender segregation in the labour market is demonstrated by the feminization of sectors such as education (81 per cent of women), health and social security (83 per cent), and personal services (77 per cent), where they are more likely to occupy managerial positions but where average salaries are lower than average in the country. In contrast, men account for a higher proportion of the workforce in such sectors as construction, transport and industry where they occupy managerial positions offering salaries higher than average in the country. The report also highlights that women's higher educational achievements do not translate into equivalent jobs and salary levels (paragraph 3.6). The Committee recalls that occupational gender segregation channelling women into lower paying jobs or occupations or positions without career opportunities has been identified as one of the underlying causes of the gender pay gap. Historical attitudes towards the role of women in society along with stereotypical assumptions regarding women's aspirations, preferences and "suitability" for certain jobs have contributed to such occupational segregation in the labour market, and an undervaluation of so-called "female jobs" in comparison with jobs performed by men (see 2012 General Survey on the fundamental Conventions, paragraphs 697 and 712). The Committee observes that the Government does not provide specific information on the measures adopted with a view to reducing the gender pay gap. ***The Committee once again asks the Government to provide detailed information on the measures taken or envisaged in order to reduce the persistent gender wage gap, and address its underlying causes including any prevailing stereotypes regarding women's preferences and suitability for certain jobs. The Committee asks the Government to provide information on the measures taken or envisaged to improve the access of women to a wider range of job opportunities, including in higher-level positions and in sectors in which they are currently absent or under-represented. The Committee also asks the Government to continue to provide detailed and up-to-date statistics on the wages of women and men, including sex disaggregated data by industry and occupational category.***

The Committee is raising other matters in a request addressed directly to the Government.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Article 1 of the Convention. Direct and indirect discrimination. The Committee has been referring for many years to the need to amend section 14 of the Labour Code in order to provide for a more explicit prohibition of indirect discrimination. It has also been requesting the Government to provide copies of any judicial or administrative decisions concerning indirect discrimination in employment and occupation. The Committee notes, however, that the Government does not provide any information on this matter, and recalls that indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job (2012 General Survey on the fundamental Conventions, paragraph 745). ***The Committee urges the Government to amend section 14 of the Labour Code to provide for an explicit prohibition of indirect discrimination, and to provide information on any progress made in this regard. The Committee also requests the Government to provide copies of any judicial or administrative decisions relating to cases of indirect discrimination in violation of section 14 of the Labour Code.***

Article 1(1)(a). Grounds of discrimination. Social origin. For a number of years, the Committee has been requesting the Government to add social origin to the prohibited grounds of discrimination in the Labour Code. The Committee notes with ***satisfaction*** that pursuant to Law No. 131-Z, which was adopted on 8 January 2014, "social origin" is now included as a prohibited ground of discrimination under section 14(1) of the Labour Code.

Discrimination based on sex. Sexual harassment. The Committee has been referring for a number of years to section 170 of the Penal Code, which provides for criminal liability for sexual harassment and violations of sexual freedom, and considered that addressing sexual harassment only through criminal proceedings was normally not sufficient. Consequently, it has been requesting the Government to take appropriate legislative measures to define and prohibit sexual harassment in employment and occupation. The Committee notes that the Government does not provide information on any steps taken to adopt legal provisions in this regard. Given the gravity and serious repercussions of sexual harassment, the Committee recalls the importance of taking effective measures to prevent and prohibit sexual harassment at work. Such measures should address both quid pro quo and hostile environment sexual harassment, and the Committee's general observation of 2003 provides further guidance in this regard (2012 General Survey on the fundamental Conventions, paragraph 789). ***The Committee requests the Government to strengthen the legislative protection against sexual harassment in the workplace, both by employers and co-workers, and to indicate any progress made in this respect. In the meantime, the Committee also requests the Government to indicate any practical measures taken to address both quid pro quo and hostile environment sexual harassment, including through awareness-raising activities.***

The Committee is raising other matters in a request addressed directly to the Government.

Belgium

C115 - Radiation Protection Convention, 1960 (No. 115)

Observation 2016

General observation of 2015. ***The Committee wishes to draw the Government's attention to its general observation of 2015 concerning this Convention, and particularly the request for information contained in paragraph 30.***

Article 7(2) of the Convention. Young workers under the age of 16 years. In its previous comments, the Committee requested the Government to provide information on the legislative measures adopted to give effect to this provision. The Committee notes the adoption of the Royal Order dated 31 May 2016 amending the Royal Order of 3 May 1999 on the protection of young persons at work and the Royal Order of 21 September 2004 on the protection of trainees. It notes with ***satisfaction*** that, under the terms of this new Order, the age from which types of work considered to be hazardous may be undertaken, including work involving exposure of young workers to ionizing radiations, has been increased from 15 to 16 years, in conformity with *Article 7(2)* of the Convention.

Bosnia and Herzegovina

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations received from the International Trade Union Confederation (ITUC) under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 1 September 2016, alleging large-scale anti-union discrimination practices, as well as employer interference in trade union activities. ***The Committee requests the Government to provide its comments thereon.*** The Committee also notes the observations from the Association of Employers of Bosnia and Herzegovina received under the Collective Bargaining Convention, 1981 (No. 154), and the Government's comments thereon.

The Committee notes from the Government's report the adoption of the Labour Act of the Federation of Bosnia and Herzegovina, 2016 (FBiH Labour Act), the Act on Inspections in the Federation of Bosnia and Herzegovina, 2014 (FBiH Act on Inspections) and the Labour Act of the Republika Srpska, 2016 (RS Labour Act).

Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comment, the Committee requested the Government to provide information on the measures taken or envisaged to guarantee the effective protection in practice against acts of anti-union discrimination. The Committee notes the Government's indication that the FBiH Labour Act, the RS Labour Act and the Labour Act of the Brčko District (BD Labour Act) provide for a comprehensive prohibition against anti-union discrimination and observes the detailed information provided by the Government on the relevant provisions applicable in this regard. In particular, the Committee notes with ***interest*** that the applicable legislation explicitly provides for reinstatement coupled with compensation either as a remedy to anti-union dismissal (section 124 of the FBiH Labour Act) or as a remedy to unlawful dismissal in general (section 106 of the FBiH Labour Act, section 189 of the RS Labour Act and section 81 of the BD Labour Act). The Committee further notes the information provided by the Government on the practical implementation of the prohibition of anti-union discrimination during the reporting period: (i) in the Federation of Bosnia and Herzegovina, out of nine requests for approval to dismiss union representatives received by the Ministry, three were approved; (ii) in the Republika Srpska, nine extraordinary labour inspections were conducted in the area of trade unions' working conditions from 2013 to 2015; out of two requests for approval to dismiss a union representative, one was approved; and no arbitration procedure has been initiated on disputes concerning dismissal of trade union representatives; and (iii) in the Brčko District, the labour inspectors have not yet dealt with any cases alleging violations of anti-union practices. ***Taking due note of the information provided, the Committee requests the Government to continue to provide information on the effective implementation of the prohibition of anti-union discrimination in practice, including on the number of complaints filed before the relevant authorities, their follow-up and remedies and sanctions imposed, as well as on the activities of the labour inspection in this regard. The Committee requests the Government to provide, in particular, information on the use of reinstatement as the primary remedy for anti-union dismissals, as well as on the type and amount of pecuniary compensation applied where reinstatement is not ordered.***

The Committee is raising other matters in a request addressed directly to the Government.

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1(a) and (b) of the Convention. Equal remuneration for work of equal value. Legislation. In its previous comments, the Committee asked the Government to ensure that the definition of "work of equal value" in the amendments to the Labour Law of the Federation of Bosnia and Herzegovina (FBiH) would be revised so as to give full legal expression to the concept of "work of equal value" as provided by the Convention. The Committee notes the adoption of the new Labour Law of the FBiH, which entered into force on 14 April 2016, section 77(1) of which obliges the employer "to pay equal salaries for work of equal value" to workers, irrespective of their ethnicity, religion, sex and political and trade union affiliation, as well as any other discriminatory ground referred to in section 8(1) of this Act. Section 77(2) of the Law defines, however, "work of equal value" as "work which requires the same level of professional qualifications, same capacity for work, responsibility, physical and intellectual work, skills, working conditions, and results of work." With respect to the Republika Srpska, the Committee notes that sections 19 and 22 of the new Labour Law of the Republika Srpska, which entered into force on 20 January 2016, prohibit discrimination on the basis of sex in conditions of work and all rights resulting from the labour relation, and that section 120(2) guarantees "equal wages for the same work or for the work of the same value". However, section 120(3) of the same Law provides that "work of the same value shall imply work for which the same degree of professional qualifications, that is to say, education, knowledge and skills, is required, in which the same work contribution is realized, with the same responsibility". The Committee notes that the definitions in both labour laws continue to limit the concept of work of equal value to the same level of qualifications, the same capacity to work and the same level of responsibility, physical and intellectual work, skills, working conditions and results of work, which is narrower than the principle set out in the Convention. The Committee therefore emphasizes, once again, that the concept of "work of equal value" must permit a broad scope of comparison including but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work of an entirely different nature which is nevertheless of equal value. While factors such as skill, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the factors are taken into account (see 2012 General Survey on the fundamental Conventions, paragraphs 673 and 677). ***The Committee asks the Government to amend the equal pay provisions in the Labour Law of the Federation of Bosnia and Herzegovina and the Labour Law of the Republika Srpska, in the near future, so as to ensure that the legislation provides not only for equal remuneration for men and women for equal, the same or similar work, but also addresses situations where men and women perform different work that is nevertheless of equal value. The Committee requests the Government to provide information on any new initiatives to amend the current labour legislation, and trusts that its comments will be taken into account with a view to bring the national legislation into conformity with the Convention.***

Furthermore, with respect to the application of the principle in the Labour Law of the Brcko District, the Committee had noted that prohibiting sex-based wage discrimination generally, as provided for in section 4, would not normally be sufficient to give effect to the Convention, as it does not sufficiently capture the principle of "work of equal value". The Government had previously indicated that in the Brcko District, methods for the determination of rates of remuneration were not regulated in the legislation, but that new amendments to the Labour Law, would address this issue. The Committee notes that the Government does not provide further information on any developments in this regard. ***The Committee asks the Government to ensure that in the process of amending the Labour Law in the Brcko District, full legislative expression is given to the principle of equal remuneration for men and women for work of equal value in accordance with the Convention, and to provide information on any developments in this regard.***

The Committee is raising other matters in a request directly addressed to the Government.

Bulgaria

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

Article 3(1) and (2) of the Convention. Additional functions entrusted to labour inspectors. In its previous comment, the Committee noted that amendments to the law, including to the Employment Promotion Act, established the procedures through which migrant workers in an irregular situation could enforce their right to outstanding wages upon return to their usual country of residence. It also noted the legal provisions on penalties that applied in work without a valid employment permit, which are applicable to both employers and workers. The Committee requested information on the results of the activities carried out by the labour inspectorate concerning the employment of migrant workers in an irregular situation, the role of labour inspectors in assisting migrant workers in securing their rights arising from their past employment relationship (and a description of the relevant procedures), and the decisions ordering employers to pay unpaid wages and other benefits.

In this regard, the Committee notes that the Government indicates in its report that inspections were targeted at workplaces with a high incidence of migrant workers in an irregular situation, which were increasingly undertaken in joint operations with other control authorities, mostly the Ministry of the Interior and the State Agency for National Security. The Committee further notes the Government's indication that in 2014, the labour inspectorate conducted 190 inspections relating to the employment of migrant workers, in the course of which 13 administrative penalties were imposed on migrant workers and two on employers for employing them without a valid work permit. The Government further indicates that, upon detecting migrant workers in an irregular situation with regard to their residence permit, labour inspectors informed these workers about their rights under the Employment Promotion Act. However, the Committee also notes that the Government has not provided information on cases in which migrant workers in an irregular situation have actually obtained their rights from their employment relationship.

In this regard, the Committee recalls its indications made in paragraph 78 of its 2006 General Survey on labour inspection that the primary function of labour inspection is to protect workers and not to enforce immigration law. It also would like to stress, that the association of the inspection staff in joint operations with authorities in charge of the national security, including the police, is not conducive to the relationship of trust that it is essential to enlisting the cooperation of employers and workers with the labour inspectorate, as workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as being fined, losing their job or being expulsed from the country. The Committee therefore considers that the participation of the labour inspection staff to such joint operations is incompatible with *Article 3(2)* of the Convention. Concerning the sanctioning of workers detected for working without a valid employment permit, the Committee recalled that it noted, also in paragraph 78 of the 2006 General Survey, that, with the exception of a few countries, only the employer is held accountable for illegal employment as such, with the workers involved in principle being seen as victims. ***The Committee requests the Government to take measures to ensure that any activities carried out by the labour inspectorate with regard to the legality of employment should have as its objective the protection of the rights of workers. In this regard, it also requests the Government to take the necessary measures to ensure that labour inspection staff is no longer involved in joint operations with authorities in charge of the national security.***

The Committee also requests that the Government provide detailed information on cases in which migrant workers in an irregular situation have obtained the actual payment of wage arrears and other benefits due to them by virtue of their employment. The Committee also requests the Government to continue to provide statistical information on the violations detected by labour inspectors concerning work without a valid employment permit, the legal proceedings initiated, and the penalties imposed on employers and workers.

The Committee is raising other matters in a request addressed directly to the Government.

Bulgaria

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations received on 1 September 2016 from the International Organisation of Employers (IOE), which are of a general nature. The Committee also notes the observations of the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB) received on 29 August 2016 with the Government's report, concerning issues being raised by the Committee. The Committee also notes the observations received on 31 August 2016 from the International Trade Union Confederation (ITUC) referring to issues under examination by the Committee as well as alleged violations in law and in practice of the right to organize of foreign workers and firefighters. ***The Committee requests the Government to provide its comments thereon. Furthermore, it once again requests the Government to provide its comments on the 2013 and 2014 ITUC observations and the 2014 observations of the KNSB/CITUB on the practical application of the Convention.***

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee recalls that for a number of years it has been raising the need to amend section 47 of the Civil Servants Act, which restricts the right to strike of public servants, including those not exercising authority in the name of the State. The Committee notes the Government's indication that: (i) on 9 September 2015, the Council of Ministers adopted a decision approving the draft Act amending the Civil Servants Act to regulate the right to strike for civil servants; (ii) the Bill was approved by the Administrative Reform Council and the National Council for Tripartite Cooperation, and was then submitted for discussion by the Council of Ministers to the National Assembly; (iii) the Committee on Labour, Social and Demographic Policy approved the Bill and advised the Parliament to support the amendments at first reading; (iv) on 10 February 2016, the National Assembly adopted at first reading the amendments to the Civil Servants Act, which entitle civil servants to go on strike; and (v) on 29 June 2016, it was submitted for consideration to the Committee on Legal Affairs of the National Assembly. The Committee also notes that the KNSB/CITUB confirms that the final adoption of the Bill amending the Civil Servants Act by the National Assembly is expected at the end of 2016. The Committee notes with ***interest*** this information. ***The Committee trusts that the draft Act amending the Civil Servants Act to regulate the right to strike for civil servants will be adopted in the very near future and requests the Government to provide a copy of the Act once it is adopted.***

The Committee further recalls its comments concerning the need to amend section 11(2) of the Collective Labour Disputes Settlement Act, which provides that the decision to call a strike shall be taken by a simple majority of the workers in the enterprise or the unit concerned, and section 11(3), which requires the strike duration to be declared in advance. Noting that the Government does not provide information in regard to this matter, the Committee recalls that: (i) requiring a decision by over half of the workers involved in the enterprise or unit in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises, and that if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level; and (ii) workers and their organizations should be able to call a strike for an indefinite period if they so wish without having to announce its duration. ***The Committee expects that the work of the inter-institutional working group created in the framework of the National Coordination Mechanism on Human Rights will accelerate the bringing of section 11(2) of the Collective Labour Disputes Settlement Act into conformity with the Convention, taking due account of its long-standing comments. The Committee requests the Government to provide information on any progress achieved in this respect, in particular on proposals made by the above working group and on relevant deliberations within the National Coordination Mechanism on Human Rights.***

In its previous comments, the Committee has also been raising the need to amend section 51 of the Railway Transport Act, which provides that, where industrial action is taken under the Act, the workers and employers must provide the population with satisfactory transport services corresponding to no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee notes the Government's indication that: (i) on 4 July 2014, at the first meeting of the inter-institutional working group of the National Coordination Mechanism on Human Rights, the Ministry of Communications and Information Technology (MTITC) requested all relevant information on the need to amend section 51 of the Railway Transport Act and pledged to discuss the issue with the competent units in the transport ministry, including the Railway Administration Executive Agency; and (ii) at the third meeting on 22 January 2015, the MTITC sent an opinion, which confirmed previously presented arguments that at this stage no amendments to this provision were on the agenda. The Committee also notes that the KNSB/CITUB alleges lack of political willingness to address this matter. ***The Committee expects that the work of the inter-institutional working group will accelerate the bringing of section 51 of the Railway Transport Act into conformity with the Convention, taking due account of the Committee's long-standing comments. The Committee requests the Government to provide information on any progress achieved in this respect, in particular on proposals made by the above working group and on relevant deliberations within the National Coordination Mechanism on Human Rights.***

Bulgaria

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations of the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB) received on 29 August 2016 with the Government's report, concerning issues being raised by the Committee. The Committee also notes the observations received on 31 August 2016 from the International Trade Union Confederation (ITUC) referring to issues under examination by the Committee as well as allegations of acts of anti-union discrimination and harassment, of a fall in the number of employers signing collective agreements and of cases of non-compliance of employers with concluded collective agreements in the energy, light industry and education sectors. ***The Committee requests the Government to provide its comments thereon. The Committee once again requests the Government to provide its comments on the 2013 and 2014 ITUC observations and the 2014 observations of the KNSB/CITUB on the practical application of the Convention.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. In its previous observation, the Committee had invited the Government to take the necessary steps to strengthen the sanctions and remedy measures available in cases of acts of anti-union discrimination in consultation with the most representative employers' and workers' organizations and to provide specific information on the application of the relevant national legislation in practice. The Committee notes the Government's indication that: (i) as regards section 71(1)(No. 3) of the Protection against Discrimination Act, which provides in cases of discrimination for a compensation with no upper limit for both material and non-material damages, the vast majority of indemnities granted in recent years have been in the range of 500–2,000 Bulgarian Lev (BGN) (€250–€1,000); and (ii) according to the Supreme Court of Cassation, setting monetary compensation for non-pecuniary damage takes note of particular circumstances of the offence, injury, and its intensity; standard of living in the country as a base for a cash consideration of non-pecuniary damage; and the reference set by case law in similar cases. The Committee also notes the judicial decisions supplied by the Government to illustrate the application of sections 71 and 78 of the Protection against Discrimination Act and sections 225(1) and 333(3) of the Labour Code.

Noting the compensation imposed in practice (BGN500 to BGN2,000 (€250–€1,000)) under section 71(1)(No. 3) and the fine in section 78(1)(No. 2) of the Protection against Discrimination Act (BGN250 to BGN2,000 (€125–€1,000)) as well as the compensation under section 225(1) of the Labour Code (up to six months' wages), the Committee observes that the minimum wage in Bulgaria was €215 in January 2016. The Committee recalls that under section 344(1) of the Bulgarian Labour Code, a factory or office worker shall be entitled to contest the legality of the dismissal thereof before the employer or before the court and to claim that the dismissal be pronounced wrongful and be revoked; that the worker be reinstated to the previous work; that the worker be paid compensation for the period of work suspension due to the dismissal; and that the grounds for the dismissal, as entered in the workbook or in other documents, be corrected. The Committee considers that where a State opts for the principle of reinstatement, it is important to ensure that the system also envisages retroactive wage compensation as well as compensation for the prejudice suffered, with a view to ensuring that all of these measures taken together constitute a sufficiently dissuasive sanction. ***Noting the acts of anti-union discrimination alleged by the ITUC, the Committee hopes that the Government will take the necessary steps to strengthen the existing remedy measures in consultation with the most representative employers' and workers' organizations so as to ensure that the package of measures against anti-union discrimination constitutes a sufficiently dissuasive sanction, in order to give effect to Article 1 of the Convention in practice. The Committee also requests the Government to: (i) provide statistics as to the average length of reinstatement proceedings; (ii) specify the number of reinstatement orders issued in cases of anti-union dismissal; and (iii) clarify whether a worker alleging anti-union dismissal may initiate proceedings both under the Labour Code (sections 344 and 225) and the Protection against Discrimination Act (sections 71 and 78).***

Article 2. Protection against acts of interference. The Committee had previously noted that national legislation does not provide adequate protection of workers' organizations against acts of interference by employers or employers' organizations and had requested the Government to indicate the legislative measures taken or envisaged to this end. Noting that the Government provides no information in this respect, the Committee takes note of the ITUC allegations of acts of harassment and interference on the employer's side, and observes that the KNSB/CITUB insists on the need to adopt penal sanctions against acts of interference. ***Recalling that national legislation should explicitly prohibit all acts of interference mentioned in the Convention and make express provision for rapid appeal procedures, coupled with dissuasive sanctions, in order to ensure the application in practice of Article 2 of the Convention, the Committee once again requests the Government to take the necessary measures in the near future to amend the national legislation accordingly. In this respect, the Committee hopes that the work of the inter-institutional working group created in the framework of the National Coordination Mechanism on Human Rights will accelerate the bringing of national legislation into conformity with the Convention, taking due account of the Committee's long-standing comments. The Committee requests the Government to provide information on any progress achieved in this respect, including on the proposals made by the working group and on relevant deliberations in plenary.***

Articles 4 and 6. Collective bargaining in the public sector. The Committee recalls that for a number of years it has been requesting the Government to amend the Civil Servants Act so that the right to collective bargaining of public service workers not engaged in the administration of the State, is duly recognized in national legislation. The Committee notes the Government's indication that: (i) on 9 September 2015, the Council of Ministers adopted a decision approving the bill amending the Civil Servants Act to regulate the right to bargain collectively for civil servants; (ii) the bill was approved by the Administrative Reform Council and the National Council for Tripartite Cooperation, and was then submitted for discussion by the Council of Ministers to the National Assembly; (iii) the Committee on Labour, Social and Demographic Policy approved the bill and advised Parliament to support the amendments at first reading; (iv) on 10 February 2016, the National Assembly adopted at first reading the amendments to the Civil Servants Act, which entitle civil servants to sign collective bargaining agreements; and (v) on 29 June 2016, the bill was submitted for consideration to the Committee on Legal Affairs of the National Assembly. The Committee also notes that the KNSB/CITUB confirms that the final adoption of the bill amending the Civil Servants Act by the National Assembly is expected at the end of 2016. The Committee welcomes this information. ***The Committee trusts that the bill amending the Civil Servants Act to regulate the right to collective bargaining for civil servants will be adopted in the very near future and requests the Government to provide a copy of the Act once it is adopted.***

Bulgaria

C181 - Private Employment Agencies Convention, 1997 (No. 181)

Observation 2016

The Committee notes the observations of the Confederation of Independent Trade Unions of Bulgaria (KNSB/CITUB) transmitted by the Government with its report.

Articles 1(1)(b) and 3 of the Convention. Legal status and services provided by private employment agencies. The Government indicates in its report that, with the active participation of the social partners, the Labour Code, the Employment Promotion Act and the Ordinance on the Conditions and Procedure for Performance of Employment Agency Services were amended to increase protection to temporary work agency workers in the user enterprises. The Government adds that the Labour Code only allows for the provision of temporary workers until a specific task is concluded and as substitute for factory or office workers who are absent from work. Moreover, a user enterprise having concluded a mass layoff may only conclude an agreement with a temporary work agency after six months. The Labour Code also stipulates that the total number of factory and office workers made available to a user enterprise must not exceed 30 per cent of the overall workforce of the user enterprise. ***The Committee requests the Government to continue to provide information on the status of private employment agencies and on any changes made to the legislative framework governing their operation. Please also provide information on the criteria set out under national legislation to establish when the termination of workers is deemed to constitute a collective dismissal.***

Articles 4, 11 and 12. Freedom of association and right to collective bargaining. Adequate protection for workers and allocation of responsibilities. The KNSB/CITUB observes a general lack of protection of workers of private employment agencies. Particularly, the workers' organization is of the view that, despite amendments to the legislation governing the operation of temporary work agencies, the applicability of collective agreements, remuneration and freedom of association differs between workers of such agencies and workers employed by user enterprises. In its 2010 General Survey concerning employment instruments, paragraph 310, the Committee emphasizes that freedom of association and the right to collective bargaining are to be fully guaranteed to all workers placed by private agencies or employed by temporary work agencies, as stipulated in *Articles 4* and *11* of Convention No. 181. The KNSB/CITUB further indicates that the Government's aim to reduce unemployment levels through the regulation of private employment agencies has not been achieved. The Committee notes the areas to be covered in the employment contract of a worker employed by a temporary work agency in the Labour Code. It notes, however, that no information was provided with regard to compensation in case of insolvency and protection of workers claims as well as maternity protection and benefits, in addition to parental protection and benefits (*Article 11(i)* and *(j)* of the Convention). The Committee also notes that, further to those two points of *Article 11,* information is insufficient whether the agreement to be concluded between the temporary work agency and the user enterprise stipulating the responsibilities of the user enterprise covers temporary work agency workers' statutory social security benefits and their access to training (*Article 12(d), (e), (h)* and *(i)*). ***The Committee requests the Government to provide detailed information indicating how it is ensured that workers of private employment agencies, including temporary work agencies, enjoy adequate protection with regard to Article 4 and all matters included in Article 11 and how the responsibilities are allocated between private employment agencies and user enterprises in accordance with Article 12.***

Articles 8, 10 and 14. Migrant workers. Infringements. Adequate remedies. The Committee notes that no information has been provided on the application of *Articles 8, 10 and 14* of the Convention. ***The Committee once again requests the Government to provide information on the number and nature of any infringements reported and penalties imposed in relation to abuses and fraudulent practices in recruitment, placement and employment of migrant workers. Please also provide information on whether bilateral agreements with other member States have been concluded to prevent abuses and fraudulent practices in recruitment, placement and employment of migrants. The Committee also requests the Government to provide a general appreciation on the manner in which the Convention is applied in the country, including, for example, extracts from inspection reports, information on the number of workers covered by the measures giving effect to the Convention and the number and nature of infringements reported.***

Article 13. Cooperation between the public employment service and private employment agencies. The KNSB/CITUB welcomes the introduction of a new information and communication system in March 2015 as an important step to improve the Government's control over and communication with temporary work agencies. The KNSB/CITUB deplores a lack of concrete objectives and measures in the National Employment Action Plan 2015 for the cooperation between the Employment Agency and private employment agencies. In this regard, the KNSB/CITUB considers that the system in question constitutes a step toward the improvement of the supervision of the relevant agencies. The KNSB/CITUB nevertheless hopes that this information system will enable the competent authorities to access sufficient information pertaining to the activities of private employment agencies as contemplated in *Article 1(1)(a)* of the Convention. In this regard, the Government indicates that, while previously information on persons mediated into employment has been submitted to the Employment Agency on a quarterly basis, the changed legislative framework regulating intermediation activities enables the competent authorities to obtain up-to-date information about the activities of private employment agencies in general. Furthermore, the Government indicates that, as part of the National Employment Action Plan 2015, the Employment Agency has intensified partnerships with mediation agencies and temporary work agencies to bring unemployed persons more effectively into employment. Consequently, by 15 April 2015, the Employment Agency had concluded cooperation agreements with 33 of the 115 certified temporary work agencies. Such agreements resulted in the employment of 2,918 unemployed persons in the period 2012 to 31 May 2015. ***The Committee requests the Government to continue to provide information on the conditions to promote efficient cooperation between the Employment Agency, including local employment agency offices, and all private employment agencies and how these are formulated, established and periodically reviewed.***

Croatia

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 31 August 2016, of the Union of Autonomous Trade Unions of Croatia (UATUC) and the Independent Trade Unions of Croatia (WHS), received on 31 August 2016, and of the Association of Croatian Trade Unions (MATICA) received on 14 October 2016. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***regret*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 103rd Session, May–June 2014)

The Committee takes due note of the discussion which took place within the Conference Committee in June 2014.

The Committee notes the observations received on 1 September 2014 from ITUC and requests the Government to provide its comments on the application in practice of the provisions of the Convention.

Article 1 of the Convention. Protection of workers against acts of anti-union discrimination. In its previous comments, the Committee, referring to allegations of excessive court delays in dealing with cases of anti-union discrimination, had requested the Government to provide information on the progress made with respect to the measures aimed at improving the efficiency of the legal protection. The Committee notes from the information provided by the Government to the Conference Committee that: (i) a comprehensive process of judicial reform has been taking place during the past few years, in the framework of which many laws have been amended, the courts have been restructured and their territorial distribution modified, and information technology has been advancing, which resulted in a considerable drop of the number of unresolved cases; and (ii) the Labour Inspectorate Act was adopted and entered into force on 20 February 2014 and the Inspectorate Unit was established as a separate unit within the Ministry of Labour and Pension System since 1 January 2014. ***The Committee requests the Government to continue to provide details on measures envisaged or taken with a view to accelerating judicial proceedings in cases of anti-union discrimination, and to provide practical information including statistics concerning the impact of such measures on the length of the proceedings.***

Articles 4 and 6. Promotion of collective bargaining in the public service. In its previous comments, the Committee, referring to previous allegations made by the Trade Union of State and Local Government Employees of Croatia (SDLSN) that the Local and Regional Self-Government Wage Act of 19 February 2010 restricts the right of employees of financially weaker local and regional self-government units to bargain collectively over the wage formation basis, had noted the Government's indication that salaries of civil servants in local and regional self government units are adjusted to salaries of civil servants at state level and had requested the Government to provide information on the practical application of such adjustment. The Committee notes from the information provided by the Government to the Conference Committee that: (i) the wage formation basis for the calculation of pay of employees of all local and regional self-government units, including financially weaker ones, is determined by collective bargaining (section 9 of the Act); (ii) the wage formation basis in units where aids exceed 10 per cent of the unit income must not exceed the wage formation basis of civil servants (section 16); and (iii) this restriction ensures that units which do not have sufficient income for their expenses and rely on aid from the state budget for the salaries of their employees, cannot increase salaries disproportionally to their income. The Committee recalls that special modalities for collective bargaining in the public service, in particular as regards wage clauses and other clauses with budgetary implications, are compatible with the Convention. ***Noting that the SDLSN criticizes the current system, the Committee invites the Government to initiate a dialogue with the most representative workers' organizations in the local and regional self government units of the public service with a view to exploring possible improvements to the collective bargaining system on the wage formation basis.***

Furthermore, the Committee had noted the allegations that the Act on the Realization of the Government's Budget of 1993 allowed the Government to modify the substance of collective agreements in the public sector for financial reasons. Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee had requested the Government to provide a copy of the relevant legislative provisions and information on their application in practice. The Committee notes from the information provided by the Government to the Conference Committee that this law is no longer in force, that it is standard procedure to adopt annually an act on the realization of the state budget, and that the Act on the Realization of the State Budget of the Republic of Croatia for 2014 was recently adopted but not yet translated into one of the ILO working languages. ***The Committee requests the Government to provide a copy of the aforementioned Act and underlines the importance of ensuring that any future Act on the Realization of the State Budget does not enable the Government to modify the substance of collective agreements in force in the public service for financial reasons.***

With reference to previous allegations of MATICA denouncing the content of the Act on the Criteria for Participation in Tripartite Bodies and Representativeness for Collective Bargaining of 13 July 2012 (2012 Representativeness Act), the Committee had expressed the wish to receive any comments the most representative employers' and workers' organizations may wish to make in respect of this matter, so as to enable it to assess the established representativeness criteria. The Committee notes the Government's indication that: (i) the contested 2012 Representativeness Act is no longer in force; (ii) a new Act on Trade Unions' and Employers' Associations' Representativeness (2014 Representativeness Act) was adopted and entered into force on 7 August 2014 as part of a package which included adoption of a new Labour Act; and (iii) the 2014 Representativeness Act was elaborated in close cooperation and after numerous consultations with all representative social partners including MATICA. The Committee notes that the Government draws attention to certain developments in the new legislation that seek to address issues previously raised by MATICA (for example, longer period of extended application of collective agreement after expiry may be specified by the collective agreement in question; professional unions must fulfil the same general representativeness criteria as all other unions). ***With a view to examining the conformity of the 2014 Representativeness Act with the Convention, the Committee requests the Government to provide copies of it and further information on the relevant provisions and their application in practice, and expresses the wish that the most representative employers' and workers' organizations provide any views or comments in respect of the new legislation, so as to enable it to assess the newly established representativeness criteria, and to determine whether the established criteria are shared by the most representative social partners.***

Noting the adoption of the new Labour Act in 2014, the Committee invites the Government to provide information on the provisions giving effect to the Articles of the Convention, and their application in practice.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Croatia

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

The Committee notes with ***regret*** that the Government's report has not been received. Noting the adoption of the new Labour Act of 18 July 2014, the Committee hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the specific issues raised in relation to the Labour Act, and other matters raised in its previous comments.

Articles 2 and 3 of the Convention. Gender equality in employment and occupation. The Committee recalls section 11 of the Gender Equality Act concerning the adoption of action plans for promoting and ensuring gender equality. The Committee notes the Government's indication that guidelines for the application of section 11 were sent to all the parties concerned and that, until mid-2010, all ministries, central state offices and many legal entities predominantly owned by the Government had produced their respective action plan proposals.

With regard to women's entrepreneurship, the Committee notes that strengthening women's entrepreneurship has been set as one of the key activities and measures in the newly adopted National Policy for Gender Equality 2011–15. The Committee also notes the Government's indication that the Ministry of Economy, Labour and Entrepreneurship has been conducting a project entitled "Women Entrepreneurship", and that a total of 1,001 grants were approved amounting to 10,540,000 Croatian kuna (HRK) (approximately US$1,734,928) in 2010. The Committee also notes the Government's indication that the measures defined in the National Policy for Gender Equality aim at promoting the employment of women in the information and communications technology sector, which according to the Government will contribute to the elimination of occupational segregation in the area. The Committee further notes the Government's indication that the National Employment Promotion Plan 2011–12 has as key priorities increasing the level of employability and the rate of labour market participation of women with low or inadequate education, and women belonging to national minority groups. As regards education, the Committee notes the Government's indication that the rate of girls enrolling in the industrial and artisan school programmes increased in comparison to 2007 and reached 36.3 per cent. The number of female students in 2009 who enrolled in public colleges and who completed their university education also increased to 56.3 per cent, and 58.6 per cent, respectively. The "Implementation Activities Plan of the Economic Recovery Programme" of the Government also aims at increasing interest of the students in maths and natural sciences which have traditionally been considered "male fields". As regards the public sector, the Committee notes the Government's indication that a total of 22,980 women and 29,862 men were employed in the Government in 2009, and the share of women rose to 43.49 per cent in 2009; the rate of women in state administration's managerial positions increased to 3.2 per cent in 2009. ***The Committee asks the Government to provide information on the measures taken to promote women's access to a wider range of jobs, including posts of responsibility and management positions, both in the private and the public sectors, and to provide them with a wider choice of educational and vocational opportunities, and their impact. The Committee also asks the Government to provide more specific information on the number and proportion of female civil servants and civil service employees in posts of responsibility.***

Equality of opportunity and treatment in employment and occupation of the Roma. The Committee notes the measures taken in 2009 and 2010, pursuant to the National Programme for the Roma and the Action Plan for the Decade of Roma Inclusion, 2005–15, relating to the employment and training of persons belonging to the Roma national minority. The Committee recalls the Government's indication that the main obstacle for members of the Roma to access employment is their low level of education. The Committee notes the Government's indication in this respect that 824 Roma children engaged in pre-school education in the years 2009–10, and 4,435 Roma children were engaged in primary education at the beginning of the school year 2010–11, both of which showed an increasing trend compared to previous years. A database on the integration of members of the Roma national minority in the education system has also been developed. In addition, the Ministry of Science, Education and Sport has encouraged the involvement of Roma children in pre-school education, including through sharing of costs paid by parents. The Government also indicates that the adoption of the National Curriculum for Pre School Education and General Mandatory and Secondary Education in July 2010, in combination with the external evaluation of Roma educational results, would make it possible to adequately assess problems and improve the education of the Roma. With regard to Roma women, the Committee notes the Government's indication that a research study entitled "The lives of Roma women in Croatia with focus on the approach to education" was conducted, which aimed at raising awareness in the Roma community and in society as a whole concerning the problems Roma women were facing with regard to access to education.

With regard to the employment service, the Government indicates that 4,553 members of the Roma community were registered in 2010, although the Government also indicates that due to a tendency of the Roma not to disclose their Roma identities, and due to the fact that the employment service does not collect unemployment rates disaggregated by ethnicity, there is a problem in establishing a database of unemployed Roma. The Government further indicates that the Roma have been provided with assistance in drafting their job profiles and developing individual plans on job search, and that the employment of the Roma for a period of 24 months is subsidized. ***The Committee asks the Government to provide information on the measures taken to ensure equal access to education, including pre-school education, for Roma children, without discrimination. The Committee also asks the Government to strengthen its efforts to promote employment opportunities and to ensure equal treatment of the Roma in employment and occupation, including by adopting specific measures concerning the employment of Roma women. Please also provide specific information on the impact of the assistance concerning job search provided for the Roma by the employment service.***

Article 3(d). Access of minorities to employment under the control of a national authority. The Committee notes the adoption of the Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities for the period 2011–13, which includes the adoption of a long-term civil service employment plan with the goal of 5.5 per cent share of persons belonging to national minorities in the total number of civil servants. The Government has adopted the Civil Servants Employment Plan for persons belonging to national minorities for the period 2011–14. The Committee also notes the Government's indication that persons belonging to national minorities are given priority in employment in state administration. In regional and local self government units, only municipalities and cities where the rate of national minorities exceeds 15 per cent of the total population, and counties where the rate of national minorities exceeds 5 per cent, are obliged by law to adopt civil service recruitment plans. The Committee further notes the Government's indication that a study on the share of national minorities in the public sector was conducted in the year 2011, which showed that no under-representation of national minorities was observed in five counties covered by the study, namely Osijek-Baranja, Vukovar-Srijem, Bjelovar-Bilogora, Sisak-Moslavina and Istria. ***The Committee asks the Government to provide information on the following:***

- ***(i) the efforts made by the Government to promote and ensure access by members of national minorities to public employment in the framework of the Civil Service Employment Plan;***
- ***(ii) the progress made in achieving recruitment targets concerning minorities; and***
- ***(iii) the current ethnic and gender composition of the civil service.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Croatia

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

Observation 2016

The Committee note with ***regret*** that the Government's report has not been received. Noting the adoption of the new Labour Act of 18 July 2014, the Committee hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the specific issues raised in relation to the Labour Act, and other matters raised in its previous comments.

Article 3 of the Convention. National policy. The Committee recalls the National Policy for the Promotion of Gender Equality (2006–10). The Committee notes with interest the legislative measures to give effect to the provisions of the Convention, in particular the adoption of the Anti-discrimination Act, 2008 (*Official Gazette* No. 85/08), and the Maternity and Parental Benefits Act, 2008, as last amended in 2011 (*Official Gazette* Nos 85/08, 10/08 and 34/11), as well as the establishment of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee notes that section 1(1) of the Anti-discrimination Act provides for protection against discrimination on various grounds, including gender and marital or family status. The Office of the Ombudperson has been a central equality body since 2009 and according to its report, three cases concerned marital or family status among a total of 172 cases of alleged discrimination filed with the Office. ***The Committee asks the Government to provide information on the practical application of the Maternity and Parental Benefits Act, 2008 and the results achieved under the National Policy for the Promotion of Gender Equality (2006–10), in order to promote equality of treatment and opportunity of workers with family responsibilities. Please also provide information on the functions of the Maternity and Parental Benefits Act Implementation Monitoring Commission. The Committee further requests the Government to provide information on any cases of discrimination related to family responsibilities dealt with by the Office of the Ombudperson or the courts.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Cyprus

C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)

Observation 2016

Articles 3(2) and 4(2) of the Convention. Exemptions from the prohibition on night work for persons of 16 and 18 years. The Committee previously noted that section 13(1) of the Protection of Young Persons at Work Law No. 48(1) of 2001 provides that work by young persons is prohibited between 11 p.m. and 7 a.m., irrespective of the nature of work. It also noted that section 13(2) of Law No. 48(1) permits a young person to work between 11 p.m. and 7 a.m. for the purposes and under the conditions determined by regulation. Under the terms of section 2 of the Law, the term young person means any person of 15 years of age but under 18 years. In this regard, it noted the Government's indication that Law No. 48(1) of 2001 was being amended and that the Regulations which provide for the conditions under which night work is allowed for young persons was pending before the House of Representatives. The Government indicated that according to the amending Law, section 13(2) will be applicable to young persons of 16 years of age but under 18 years.

The Committee notes with ***satisfaction*** that section 13(2) of the Protection of Young Persons at Work Law No. 48(1) of 2001 has been amended by Law No. 15(1) of 2012, whereby the exceptions to the prohibition on night work shall be allowed only for young persons of 16 to 18 years of age. The Government also states that Regulation 15 provides for the terms and conditions under which night work shall be allowed for young persons of 16 years as well as the specific sectors of economic activity in which such exceptions may be permitted.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (CAS) in June 2016 and the resulting conclusions of the Conference Committee, which addressed the following issues: (1) the anti-discrimination legislation; (2) the scope of Act No. 451 of 1991 (the Screening Act) further to the adoption of Act No. 234 of 2014 (the Civil Service Act); and (3) the impact of programmes of assistance for the integration in employment of the Roma population. The Committee also notes the observations from the Czech–Moravian Confederation of Trade Unions (CMKOS) in relation to the scope of the anti-discrimination legislation which were attached to the Government's reports received on 10 March 2016 and 30 November 2016.

Article 1 of the Convention. The anti-discrimination legislation. The Committee recalls that the Labour Code of 2006 (Act No. 262/2006) prohibits all forms of discrimination in labour relations without specifying any prohibited grounds, unlike the previous Labour Code, and refers for that purpose to the Anti-Discrimination Act (No. 198/2009). The Employment Act (No. 435/2004) – which used to contain a broad enumeration of prohibited grounds of discrimination – also refers to the Anti-Discrimination Act of 2009 further to its amendment in 2011. As a result, the grounds of political conviction and membership or activity in political parties, trade unions or employers' organizations which were expressly covered by the previous Labour Code and the Employment Act are no longer included in any legislation, thereby reducing the legal protection of workers against discrimination. The CMKOS, in its observations, continues to point out the lack of protection against discrimination based on membership in trade unions which is, according to the organization, quite common in industrial relations. The Committee notes the Government's indication in its report of 10 March 2016 and before the Conference Committee that it has adopted, after consultation with the most representative organizations of workers and employers, Resolution No. 867 of 26 October 2015 which tasked the Minister for Human Rights, Equal Opportunities and Legislation to take into account discrimination based on membership of trade unions when preparing amendments to the Anti-Discrimination Act of 2009. The Committee further notes from the Government's report received on 30 November 2016 that, on the initiative of the CMKOS, the issues relating to the situation of trade unions in the country, including with respect to anti-union discrimination, were discussed on 12 September 2016 by the Presidency of the Council of Economic and Social Agreement (high-level tripartite body composed of chairpersons of the most representative organizations of workers and employers, the Prime Minister and the Minister of Labour and Social Affairs). During this meeting, the CMKOS presented a bill to amend the Labour Code with a view to reintroducing the previous list of prohibited grounds of discrimination. The Government indicates that the follow-up on this bill will be coordinated by the Minister for Human Rights, Equal Opportunities and Legislation. ***The Committee requests the Government to take the necessary measures, in consultation with workers' and employers' organizations, to ensure the protection of workers against discrimination in training, recruitment, terms and conditions of employment, on the basis of all the grounds enumerated by Article 1(1)(a) of the Convention, including political opinion, and all the grounds that were previously covered by the labour legislation (Article 1(1)(b)). The Committee also requests the Government to provide information on any action taken pursuant to Resolution No. 867 of 26 October 2015 to amend the Anti-Discrimination Act of 2009 with respect to grounds of discrimination, and on any progress made regarding the bill to amend the Labour Code to reintroduce the previous list of prohibited grounds of discrimination. The Committee also requests the Government to continue to monitor closely the application of the Anti-Discrimination Act specifically in the field of employment and occupation as well as the application of the Labour Code and the Employment Act of 2004, in practice, particularly with regard to the possibility for workers to assert their right to non-discrimination and to obtain compensation.***

Discrimination on the basis of political opinion. The Screening Act. With reference to the above comments, the Committee recalls that discrimination on the basis of political opinion is not prohibited under the labour and anti-discrimination legislation. It also recalls that, for a number years, it has been requesting the Government to amend or repeal the Screening Act in so far as it requires negative screening certificates – in relation to the former political system – to enter the civil service, and therefore violates the principle of non-discrimination on the basis of political opinion. The Committee notes with ***interest*** the Government's indication in its report and to the Conference Committee that further to the adoption of the Civil Service Act (Act No. 234/2014) which came into force on 1 January 2015, the Screening Act was amended to require negative screening certificates only for decision-making positions under the Civil Service Act. The Committee also notes that the Government's representative indicated during the discussions in the Conference Committee that the employees in the state administration who were outside the civil service had been excluded from the application of the Screening Act since the entry into force of the Civil Service Act. The Committee welcomes the Government's indication regarding state employees that, as of 1 June 2016, there were 69,470 service-status positions (that is positions directly involved in preparation and implementation of government policies), of which 9,931 were decision-making positions for which a negative screening certificate is necessary, and 7,094 employee-status positions (that is positions employed by the Government, but not involved with Government policies) of which 348 management positions which no longer require a negative screening certificate after the Civil Service Act became effective. The Committee further notes from the Government's report that out of the 2010 screening certificates issued in 2015, 1.7 per cent were positive and in 2016, 0.9 per cent were positive out of the 2,446 certificates issued. ***While noting these positive developments, the Committee requests the Government to indicate clearly the functions in respect of which screening is required under the Civil Service Act, specifying the relevant sections of the Act, and to provide a copy of the relevant amendment of the Screening Act. Noting the number of certificates issued in the past two years, the Committee requests the Government to continue to monitor closely the application of the Screening Act and provide information on the screening certificates issued, indicating the number and nature of certificates issued and providing examples of the positions concerned. The Committee also requests the Government to provide statistical information on any appeals lodged against a positive certificate and its results.***

The situation of the Roma in employment and occupation. The Committee welcomes the detailed information provided by the Government in its reports and to the Conference Committee on the numerous programmes of assistance aimed at helping disadvantaged groups, including the Roma community, to acquire qualifications and develop skills and gain work experience through social or sheltered jobs and community service, and increase their employment prospects on the labour market. It also welcomes the Government's indication that it has adopted in 2015 the "Strategy for Roma Integration by 2020" aiming explicitly at establishing a framework for measures to improve the situation of Roma in the areas of education, training, employment, housing and health, to mitigate gradually unjustified and unacceptable differences between the situation of a large part of the Roma population and the rest of the population and to ensure their efficient protection against discrimination. The Committee further notes the Government's indication that 29 grant projects were implemented in 2015 and 2016 with a view to increasing employment and employability of the Roma minority. The Government also indicates that the expected impacts aim at improving the situation in the "excluded localities". The Committee recalls that the Conference Committee has requested information regarding the real impact of such programmes for the integration in employment of the Roma population, including women of the Roma community. With reference to its previous comments regarding the Comprehensive Strategy for Combating Social Exclusion (2011–15) aimed at addressing comprehensively social exclusion and school segregation, which affects disproportionally the members of the Roma community, the Committee recalls that it is difficult to assess the results and real impact of all the measures taken in the framework of this strategy. The Committee would like to point out the importance to complement these essential employment policy measures with appropriate measures to address stereotypes and prejudices regarding the capabilities and preferences of the Roma people, combat effectively discrimination and stigmatisation and promote respect and tolerance between all segments of the population. ***The Committee therefore requests the Government to continue to take action to promote the employment of Roma, in cooperation with employers' and workers' organizations, and take the necessary measures to assess the impact of the measures taken within the framework of the various projects and programmes, including the Comprehensive Strategy for Combating Social Exclusion (2011–15) and the Strategy for Roma Integration by 2020. The Government is requested to provide information on the results achieved. The Committee further requests the Government to provide specific information on the measures taken to reform the educational system to end segregation of Roma pupils and promote inclusive education. The Committee requests the Government to***

take concrete measures, within the above established framework or otherwise, to fight against stigmatisation and discrimination of the Roma population and promote tolerance among all the segments of the population.

Enforcement. Labour inspection. Equality body. The Committee welcomes the information provided by the Government in its latest report describing in detail labour inspections carried out in 2015 in the field of "unfair treatment and discrimination" and their outcome (65 cases of violation of equal treatment under section 16 of the Labour Code were found in 2015). It also welcomes the Government's indication that selected inspectors in the regional labour inspection offices were trained in the field of equal treatment and non-discrimination and that targeted inspections focused on these issues have been included again in the main inspection tasks for 2016.

The Committee notes with ***interest*** the promotional and enforcement activities carried out by the Public Defender of Rights since 2009, in the area of non-discrimination and equality, including equal remuneration, such as dealing with discrimination claims and assisting victims of discrimination, training labour inspectors, workers' and employers' organizations and public officials, raising awareness and disseminating legal and practical information. The Committee further notes from the Public Defender's report for 2015, that most of the complaints received concern discrimination in the field of labour and employment (108 out of 379 in 2015). In a comprehensive study entitled "Discrimination in the Czech Republic: Victims of discrimination and obstacles hindering their access to justice" published in 2015, the Public Defender of Rights issues 15 recommendations for a more effective enforcement of the Anti-Discrimination Law of 2009, on the basis of a survey which identified obstacles encountered by victims of discrimination (belief that it is difficult to enforce one's rights, fear of retaliation, lack of knowledge of the relevant bodies and procedures, burden of proof in judicial proceedings, low fines, etc.). Such recommendations include the organization of targeted promotional and awareness-raising campaigns for the public and "vulnerable groups", training of judges, lawyers, inspectors, social workers, medical staff and police officers, amendment of legislation (reduction of court fees in discrimination cases, free legal aid, etc.) and the design of effective, deterring and reasonable penalties. The Committee notes that, in its observations, the CMKOS alleges that assistance by the State to victims of discrimination is insufficient. ***The Committee requests the Government to provide information on any action taken further to the recommendations of the Public Defender of Rights and any legal or practical measures taken to strengthen the enforcement of the anti-discrimination legislation. To ensure legal clarity and certainty regarding legislative non-discrimination provisions, the Committee further requests the Government to ensure the broad dissemination of the material designed by the labour inspectorate and the Public Defender of Rights to foster awareness of legal provisions and relevant procedures to obtain redress among workers, employers and their organizations, as well as labour inspectors, judges and other public officials dealing with non-discrimination and equality in employment and occupation. The Committee also request the Government to continue to provide information on the number and nature of any administrative or judicial decisions applying and interpreting the legal provisions on discrimination in the field of employment and occupation, including the remedies provided and the sanctions imposed.***

The Committee is raising other matters in a request addressed directly to the Government.

Denmark

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations from the Danish Confederation of Trade Unions (LO) received on 27 August 2014, 26 August 2015 and its 2016 observations submitted with the Government's report, as well as the Government's comments on the 2014 and 2016 LO observations.

Article 4 of the Convention. Right to free and voluntary collective bargaining. In its previous comment, the Committee observed that section 10 of the Act on the Danish International Register of Shipping (DIS Act) continued to have the effect of limiting the scope of collective agreements concluded by Danish trade unions to seafarers on ships registered in the Danish International Ship Register (DIS) who were Danish or equated residents and of restricting the activities of Danish trade unions by prohibiting them from representing, in the collective bargaining process, those of their members who were not considered as residents in Denmark. It requested the Government to make every effort to ensure full respect of the principles of free and voluntary collective bargaining so that Danish trade unions could freely represent in the collective bargaining process all their members – Danish or equated residents and non-residents – working on ships sailing under the Danish flag, and that collective agreements concluded by Danish trade unions could cover all their members working on ships sailing under the Danish flag regardless of residence. The Committee invited the Government to engage in a tripartite national dialogue with the relevant workers' and employers' organizations on the DIS Act so as to find a mutually satisfactory way forward.

The Committee notes the Government's indication that there has been far-reaching involvement in acting upon the Committee's comments, in particular that: (i) the Government met with the LO, the Danish Metal Workers' Union (DMWU) and the United Federation of Danish Workers (3F) in order to explore the possibilities of holding a tripartite dialogue; (ii) the LO proposed an amendment to section 10 of the DIS Act in order to grant powers to Danish workers' organizations to negotiate collective agreements at international level for seafarers not resident in Denmark but working on board DIS ships and to ensure that collective agreements and Danish wage levels cover all EU/EEA citizens working on board DIS ships; (iii) the Danish Shipowners Association (DSA) expressed a willingness to enter into further constructive dialogue but was concerned about the consequences of the LO's proposal on Denmark's competitiveness in the global maritime market; (iv) the DSA and the DMWU established a joint working group in the Contact Committee under the Danish International Ship Register Main Agreement (DIS Main Agreement), which stated that there was a formal disagreement in relation to section 10(2) and (3) of the DIS Act but that, in practice, challenges were solved pragmatically through close dialogue and good cooperation between the parties and that Danish trade unions contributed to negotiations and conclusion of collective agreements between Danish shipowners and foreign trade unions; and (v) hoping that the parties to the shipping sector would find common solutions on the matter, the Government welcomed the DSA–DMWU initiative as a way to securing mutually satisfactory employment conditions on DIS ships, which is a prerequisite for any discussion on any possible amendment of section 10 of the DIS Act. In this regard, the Committee notes the LO's statement that although it had requested to initiate tripartite negotiations at least on ten occasions, no significant progress has been made on the matter and that neither the bilateral dialogue between the DMWU and the Danish Maritime Authority nor the joint working group included the LO or the 3F in the dialogue. Claiming that the tripartite dialogue should not be limited to the parties of the shipping sector, the LO calls on the Government to initiate actual dialogue on section 10 of the DIS Act, which differentiates between the negotiating powers of Danish and foreign trade unions and thus creates a legal vacuum in terms of collective bargaining, with all parties from the workers' organizations with a view to bringing it in accordance with ILO Conventions.

While taking due note of the information and materials provided by the Government, including the establishment of a working group on the discussion of the existing disagreement on section 10 of the DIS Act, the Committee observes that several social partners were not involved in the working group and that no significant progress has been made towards addressing the legislative aspect of the matter. As a consequence, section 10 of the DIS Act still has the effect of limiting the scope of collective agreements concluded by Danish trade unions to seafarers on DIS ships who are Danish or equated residents and of restricting the activities of Danish trade unions by prohibiting them from representing, in the collective bargaining process, those of their members who are not considered as residents in Denmark. In this regard, the Committee recalls that the Committee on Freedom of Association had previously considered that section 10(2) and (3) of the DIS Act constituted interference in the seafarers' right to voluntary collective bargaining and amounted to government interference in the free functioning of organizations in the defence of their members' interests (see 262nd Report, Case No. 1470, paragraph 78). ***The Committee, therefore, requests the Government to continue to make every effort to ensure full respect of the principles of free and voluntary collective bargaining so that Danish trade unions may freely represent in the collective bargaining process all their members – Danish or equated residents, as well as non-residents – working on ships sailing under the Danish flag, and that collective agreements concluded by Danish trade unions may cover all their members working on ships sailing under the Danish flag regardless of residence. The Committee requests the Government to engage in a tripartite national dialogue and to take the necessary measures to enable all the relevant workers' and employers' organizations to participate therein, if they so wish, so as to find a mutually satisfactory way forward, and to indicate in its next report its outcome and any contemplated measures.***

Finland

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Cooperation with the police in the control of immigration law. The Committee previously noted the Government's indication that inspections of migrant workers were mainly concerned with checking work permits and ensuring that employers complied with their obligations concerning minimum working conditions. It also noted the Government's indication that labour inspectors report the unauthorized employment of migrant workers to the police, and that inspections targeted at undeclared work were also conducted jointly with the police.

In this regard, the Committee notes that the Government indicates that in 2013–14, the labour inspectorate monitored migrant workers' authorization to work and observance of their minimum terms of employment in selected industries. In 2013, 3,400 labour inspections (of a total number of 22,340 labour inspections in that year) related to migrant workers, and in 2014, 2,505 labour inspections (of a total number of 24,145 labour inspections in that year) related to migrant workers. Some of the inspections were joint inspections together with other authorities, including the police, tax authorities, and border guards. The Government adds that an inspection project was carried out in the restaurant and construction industry, with the cooperation of the police and border guards. The Committee would like to stress, once again, that the involvement of inspection staff in joint operations with the police is not conducive to the relationship of trust that it is essential to enlisting the cooperation of employers and workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as being fined, losing their job or being expelled from the country. The Committee therefore considers that the participation of the labour inspection staff into these joint operations is incompatible with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129. The Committee further notes that, from 2010 to 2013, the labour inspectorate reported 178 cases concerning the unauthorized use of foreign labour to the police. It further notes the Government's indication that while the labour inspectorate monitors compliance with the statutory obligations of employers with regard to the minimum rights of migrant workers (for example, concerning the payment of wages), it is not responsible for the collection of outstanding wages or social security benefits.

The Committee therefore urges that the Government take the necessary measures to ensure that the labour inspection staff are no longer involved in joint operations with the police and to provide information on the steps taken to separate the functions of the police from the activities of the labour inspectorate.

Noting the Government's indication that the labour inspectorate is not responsible for assisting workers in obtaining their due rights relating to outstanding wages and social security benefits, the Committee requests that the Government provide information on the procedure for enforcing employers' obligations arising from the statutory rights of undocumented migrant workers for the period of their effective employment relationship, including in cases where the unauthorized employment of migrant workers is reported to the police and where such workers are expelled from the country. The Committee also requests that the Government provide information on the number of cases in which migrant nationals in an irregular situation have been granted their entitlements resulting from their past employment relationship (wages, compensation for overtime, social security benefits, etc.).

Finland

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

The Committee notes the observations by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), the Finnish Confederation of Professionals (STTK), and the Confederation of Finnish Industries (EK) attached to the Government's report.

Articles 1 and 2 of the Convention. Gender pay gap. The Committee recalls the objective of the tripartite Equal Pay Programme (2006–15) which was to reduce the pay gap to 15 per cent by 2015. The Committee notes from the Government's report that the difference in pay between men and women decreased to 17 per cent in 2011 and has remained stagnant between 2012 and 2015. According to the overall assessment of the Equal Pay Programme the stagnation in the gender pay gap is due to a period of economic difficulty in Finland and smaller wage increases compared to previous years. The Committee notes that, according to EK and AKAVA, labour market segregation remains the main reason for the gender pay gap. In this connection the Committee notes that from 2004–14, the change in the proportion of workers in "even occupations", meaning occupations with 40–59 per cent male or female wage earners, has been almost non-existent. In 2012, the proportion of wage earners in "even occupations" was 13 per cent of all wage earners. According to EK, addressing occupational segregation is the only sustainable measure to tackle the difference in average earnings. The Committee recalls that the Government's Gender Equality Programme (2012–15) aims to reduce gender segregation in education, career choices and the labour market and that several initiatives have been taken in furtherance of this aim. In this connection the Committee refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***Noting the Government's intention to implement the Equal Pay Programme until 2025, the Committee requests the Government to continue providing information on the evolution of the gender pay gap and any measures aimed at its reduction, especially how the issue of occupational gender segregation is being addressed. The Committee also asks the Government to provide summaries of any reviews of the Equal Pay Programme.***

Equality plans and equal pay surveys. The Committee notes from the Government's report that according to a survey undertaken by the central labour market organisations in 2012, the coverage of equality planning has increased. Yet, the Government indicates that coverage and quality of equality plans and pay surveys need improvement. The Government indicates that the Act on the Amendment to the Act on Equality between Women and Men (1329/2014) amended the provisions of the Act on Equality between Women and Men (609/1986) regarding the content of equality plans and pay surveys. Now, personnel representatives shall have sufficient opportunities to participate in and influence the drafting of the equality plan. If pay surveys reveal unfounded pay differences between men and women, these must be analysed and accounted for. If the pay differences are unfounded, the employer shall take corrective action. The Committee notes, however, the Government's indication that in carrying out pay surveys, wages are usually only compared between employees with the same occupational title or employees in the same task groups and that it remains to be seen whether the scope of pay comparisons will be extended beyond the current situation. ***The Committee asks the Government to continue to provide information, including statistics, on the coverage of equality plans and pay surveys in workplaces and to monitor and provide results on their impact on the gender pay gap in the workplace in light of the amendments to the Equality Act. The Committee also asks the Government to provide information on the scope of pay comparisons used in pay surveys and in this context would like to refer to its comments regarding scope of comparison.***

Scope of comparison. Repeatedly, the Committee has asked the Government to take action to enable a broader scope of comparison in the context of determining whether there has been compliance with the principle of equal remuneration for men and women for work of equal value. The Committee recalls its previous comments noting that, according to survey results, only 17 per cent of the workplaces had conducted comparison of wages of men and women across the boundaries set by collective agreements. The Committee notes that supervision of pay discrimination indicates that the principle of equal pay is understood in a very narrow way in many Finnish workplaces, employers sometimes claiming that it is not possible to compare wages between employees placed at different pay levels. The Committee notes that the equal pay provision in the Act on Equality between Women and Men (609/1986) does not contain any guidance or clarification as to the meaning of work of equal value. The Committee recalls that comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias (see 2012 General Survey on the fundamental Conventions, paragraph 675). In order to address gender pay discrimination in a gender segregated labour market where women and men are concentrated in different trades, industries and sectors the reach of comparison between jobs performed by women and men should be as wide as possible, extending beyond occupational categories, collective agreements and enterprises. ***The Committee encourages the Government to take steps towards clarifying the meaning of equal pay for work of equal value and ensure that a wide scope of comparison is being applied in all activities which affect the application of the principle of equal pay for men and women for work of equal value, including equal pay surveys.***

The Committee is raising other matters in a request addressed directly to the Government.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Legislative developments. The Committee notes with ***interest*** the Non-Discrimination Act (1325/2014), which replaces the previous Non-Discrimination Act (21/2004), and the Act (1329/2014) amending the Act on Equality between Women and Men (609/1989). Under the new Non-Discrimination Act (1325/2014), the scope of the prohibition of discrimination has been expanded and now includes the additional grounds of political activity, trade union activity and family status. Furthermore, the duty of the authorities to develop and implement an equality plan now extends to all grounds of discrimination and applies to educational institutions as well as employers that regularly have 30 or more employees. The Act on Equality between Women and Men (609/1986), which prohibits discrimination between women and men, has been amended to include the prohibition of discrimination based on gender identity and gender expression. The Government indicates that these additional grounds secure the protection of trans and intersex persons against discrimination in line with the Constitution. Furthermore, the Ombudsman for Minorities is now the Ombudsman for Non-Discrimination, with more extensive powers and the competence to deal with all grounds of discrimination prohibited by the Non-Discrimination Act (1325/2014). The National Discrimination Tribunal and the National Equality Tribunal have been merged into a single National Non-Discrimination and Equality Tribunal. The Ministry of Justice, the Ministry of Employment and the Economy and the Ministry of Social Affairs and Health organized training on the changes brought about by the new Non-Discrimination Act (1325/2014) and the Act amending the Act on Equality between Women and Men (1329/2014), which involved almost 500 labour market operators and experts from companies and labour market organizations, among others. ***The Committee asks the Government to provide information on the application in practice of the Non-Discrimination Act (1325/2014) and the Act amending the Act on Equality between Women and Men (1329/2014) and any follow-up activities aimed at ensuring understanding and compliance with the Acts.***

The Committee is raising other matters in a request addressed directly to the Government.

Finland

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Cooperation with the police in the control of immigration law. The Committee previously noted the Government's indication that inspections of migrant workers were mainly concerned with checking work permits and ensuring that employers complied with their obligations concerning minimum working conditions. It also noted the Government's indication that labour inspectors report the unauthorized employment of migrant workers to the police, and that inspections targeted at undeclared work were also conducted jointly with the police.

In this regard, the Committee notes that the Government indicates that in 2013–14, the labour inspectorate monitored migrant workers' authorization to work and observance of their minimum terms of employment in selected industries. In 2013, 3,400 labour inspections (of a total number of 22,340 labour inspections in that year) related to migrant workers, and in 2014, 2,505 labour inspections (of a total number of 24,145 labour inspections in that year) related to migrant workers. Some of the inspections were joint inspections together with other authorities, including the police, tax authorities, and border guards. The Government adds that an inspection project was carried out in the restaurant and construction industry, with the cooperation of the police and border guards. The Committee would like to stress, once again, that the involvement of inspection staff in joint operations with the police is not conducive to the relationship of trust that it is essential to enlisting the cooperation of employers and workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as being fined, losing their job or being expelled from the country. The Committee therefore considers that the participation of the labour inspection staff into these joint operations is incompatible with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129. The Committee further notes that, from 2010 to 2013, the labour inspectorate reported 178 cases concerning the unauthorized use of foreign labour to the police. It further notes the Government's indication that while the labour inspectorate monitors compliance with the statutory obligations of employers with regard to the minimum rights of migrant workers (for example, concerning the payment of wages), it is not responsible for the collection of outstanding wages or social security benefits.

The Committee therefore urges that the Government take the necessary measures to ensure that the labour inspection staff are no longer involved in joint operations with the police and to provide information on the steps taken to separate the functions of the police from the activities of the labour inspectorate.

Noting the Government's indication that the labour inspectorate is not responsible for assisting workers in obtaining their due rights relating to outstanding wages and social security benefits, the Committee requests that the Government provide information on the procedure for enforcing employers' obligations arising from the statutory rights of undocumented migrant workers for the period of their effective employment relationship, including in cases where the unauthorized employment of migrant workers is reported to the police and where such workers are expelled from the country. The Committee also requests that the Government provide information on the number of cases in which migrant nationals in an irregular situation have been granted their entitlements resulting from their past employment relationship (wages, compensation for overtime, social security benefits, etc.).

Georgia

C181 - Private Employment Agencies Convention, 1997 (No. 181)

Observation 2016

The Committee notes the observations of the Georgian Trade Unions Confederation (GTUC) received on 6 October 2015 and the Government's response received on 27 November 2015.

Articles 3, 10 and 14 of the Convention. Legal status and operation of private employment agencies. Investigation of complaints. In its observations, the GTUC indicates that there is no regulation elaborated through consultations with the social partners and no licensing is required for private employment agencies. The Government indicates in its report that private employment agencies operating as part of the association of private employment agencies, the Employment Agency Association, fulfil the requirements of the Convention as far as reasonably practicable and carry out their activities in compliance with the legislation. ***The Committee requests the Government to provide information on the measures taken to ensure that all private employment agencies operate within the conditions set out in Article 3 of the Convention and to indicate how their activities are supervised. It also requests the Government to provide information on the machinery and procedures for the investigation of complaints concerning the activities of private employment agencies. Please also include information on the activities of the Employment Agency Association in relation to matters covered by the Convention.***

Articles 4, 11 and 12. Adequate protection and allocation of responsibilities. The GTUC indicates that private employment agencies, although operating as mediators in the sense of *Article 1(1) (a)* of the Convention, conclude agreements with legal entities depositing fees for service to the agencies. The agencies then transfer the remuneration to the employees. The GTUC is of the opinion that this could constitute a threat to the right to freedom of association and the right to bargain collectively, in accordance with *Articles 4 and 11* of the Convention. The GTUC also regrets the insufficient monitoring over the protection of workers' labour rights with regard to *Articles 11 and 12* of the Convention. ***The Committee once again requests the Government to clarify whether private employment agencies become a party to the employment relationship in the sense of Article 1(1) (b), of the Convention and, if so, to provide the relevant information on each point of Articles 11 and 12 of the Convention. It also requests the Government to indicate how it is ensured that workers recruited or employed by private employment agencies are not denied the right to organize and the right to bargain collectively.***

Article 6. Processing of personal data. The Government indicates that the Law on personal data protection regulates in general the collection, use, storage and safety standards for data. The GTUC is of the view that data available to private employment agencies is not protected as required under this provision of the Convention. ***The Committee requests the Government to provide further information on the manner in which the processing of workers' personal data by private employment agencies is done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice. Please also indicate how the processing of workers' personal data is limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.***

Article 7. Fees and costs. The GTUC indicates that it is an established practice that agencies charge fees to jobseekers amounting to one or two monthly wages. The Government states that some agencies charge jobseekers for training courses in order to be eligible for a vacancy. This is to cover the training costs only and does not constitute a cost for mediation into employment. The Committee recalls that *Article 7(1)* of the Convention contains a general prohibition on the charging of fees or other costs, directly or indirectly, in whole or in part, to workers. While *Article 7(2)* does permit exceptions, the Committee stresses that making use of this provision is subject to: (a) consultation of the most representative organizations of employers and workers prior to their authorization; (b) transparency through the creation of an appropriate legal framework indicating that the authorization is limited to certain categories of workers, or specific types of services, and that it constitutes an explicit exception, and the complete disclosure of all fees and costs; (c) reporting to the ILO the reasons for making use of the exceptions (see General Survey concerning employment instruments, 2010, paragraph 334). ***The Committee requests the Government to indicate whether it has authorized any exceptions under paragraph 2 of Article 7 and, if so, to provide information on such exceptions and give the reasons therefore. If exceptions have not been authorized, the Committee requests the Government to provide information on the measures taken or envisaged to monitor and sanction unauthorized fee-charging by private employment agencies.***

Article 8. Migrant workers. The Government indicates that on 1 November 2015, the Resolution "The rule of employment of labour immigrant (foreigner without permit for permanent residence in Georgia) with local employer and performance of paid labour activities" entered into force. The Resolution provides for main guarantees, rights and obligations of a labour immigrant during the period of employment and paid labour activities, defines bodies performing state governance in the sphere of labour migration and establishes mechanisms for their implementation. The Committee notes that negotiations for bilateral agreements with Austria, Greece, Qatar and Romania are in progress. ***The Committee requests the Government to provide information on the impact of the measures taken to provide adequate protection for and prevent abuses of migrant workers recruited in Georgia by private employment agencies. It also requests the Government to provide information on the manner in which penalties are laid down against private employment agencies which engage in fraudulent practices and abuses. Please also continue to include information on the conclusion of bilateral agreements and on their effects.***

Article 13. Cooperation between the public employment service and private employment agencies. The Government indicates in its report on the Employment Service Convention, 1948 (No. 88), that, while no formal cooperation framework exists between the public employment service and private employment agencies, both sides can meet and exchange information as needed. ***The Committee once again requests the Government to provide information on the formulation, establishment and periodical review of conditions to promote cooperation between the public employment service and private employment agencies as well as on the measures envisaged to ensure the effective application of Article 13 of the Convention. It also requests the Government to provide further information on the cooperation of the Employment Agency Association with the public employment service.***

Germany

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) and the Confederation of German Employers' Associations (BDA) received on 27 August 2013, as well as the Government's report.

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Compulsory work of prisoners in privately run workshops. For a number of years, the Committee has been drawing the Government's attention to the need to adopt appropriate measures to bring the legislation and practice into conformity with the Convention, by ensuring that free and informed consent is formally required for the work of prisoners in privately run workshops in state prisons and that the conditions of work of these prisoners approximate a free labour relationship. The Committee noted that, under section 41(3) of the Act on the Execution of Sentences of 13 March 1976, employment in a workshop run by a private enterprise is to depend on the prisoner's consent. However, the consent requirement provided for by section 41(3) was suspended by the "Second Act to improve the budget structure" of 22 December 1981, and has remained a dead letter since that time. In its previous comments, the Committee also noted that, since 2006, legislation on penal enforcement came within the competence of the federal states (Länder). It welcomed the model Penal Enforcement Bill presented by ten Länder according to which work would be assigned to prisoners upon their request or with their consent.

The Committee notes, from the information provided by the Government in its latest report, that 13 Länder have adopted their own statutory regulations. Among these 13 Länder, four have adopted penal enforcement acts which no longer provide for a duty to work for prisoners (Brandenburg, Rhineland-Palatinate, Saarland and Saxony). A general obligation for prisoners to work is still in force in 12 Länder (whether under the Federal Prison Act or the newly adopted penal enforcement acts). Furthermore, the Government indicates that, except for three Länder, there remains the possibility of assigning prisoners to work in workshops managed by private enterprises. While the staff of the private enterprises have the right to issue work related instructions, the supervision of prisoners and all decisions related to inmate treatment remain the responsibility of the penal enforcement authority. The Government reiterates that work assigned to prisoners as a consequence of a decision in a court of law is crucial to integration and forms part of social reintegration plans. The Committee notes that, according to the statistics provided for 2013, 62.5 per cent of the average total number of prisoners were employed or in training, out of which 21.36 per cent worked in entrepreneur workshops. The Government further indicates that it has so far been impossible to offer employment to all prisoners willing to work.

The Committee also notes the observations submitted in 2013 by the IOE and the BDA according to which there continued to be a job shortage in prisons and therefore prison authorities welcomed jobs made available by private entities. Prisoners are not forced to work since there are fewer employment possibilities than prisoners who want to work. The IOE and the BDA stress that employment of prisoners in the private sector is compatible with the Convention. Ways in which prisoners can work for the private sector must be found so that prisoners are not deprived of opportunities for their professional reintegration after their release from prison.

The Committee recalls that it has already considered that work by prisoners for private enterprises can be held compatible with the explicit prohibition of the Convention. In such circumstance, necessary safeguards must exist to ensure that the prisoners concerned offer themselves *voluntarily,* without being subjected to pressure or the menace of any penalty, by giving their free, formal and informed consent to work for private enterprises. In such a situation, work of prisoners for private parties would not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, in the prison context, the most reliable indicator of the voluntariness of labour is the work performed under conditions which approximate a free labour relationship, including the level of wages (leaving room for deductions and attachments), the extent of social security and the application of regulations on occupational safety and health (see paragraph 60 of the 2007 General Survey on the eradication of forced labour). In this regard, the Committee refers to its previous comments on the low level of prisoners' remuneration in workshops managed by private enterprises.

The Committee welcomes the adoption in the Länder of Brandenburg, Rhineland-Palatinate, Saarland and Saxony of penal enforcement acts under which prisoners would not be assigned work in private workshops without their consent. The Committee observes that in the 12 remaining Länder the legislative framework – newly enacted penal enforcement acts by federal states or, in their absence, the Federal Prison Act – provides for a general obligation to work of prisoners and, as a consequence, prisoners may be assigned to work in privately managed workshops without their formal consent. The Committee notes in this regard that the average national percentage of prisoners working in entrepreneur workshops has been increasing steadily (12.57 in 2008; 14.94 in 2010; and 21.36 in 2013). ***Considering that, as stated by the Government, on the one hand, prisoners may gain advantages from the actual performance of work, particularly in respect of their prospects for rehabilitation and, on the other hand, labour demand exceeds labour supply, it should not be difficult in practice to obtain the formal consent of prisoners to work in workshops run by private enterprises. Therefore, the Committee strongly urges the Government to take the necessary measures to ensure that, both in law and practice, work be only assigned to prisoners in private enterprise workshops inside the prison premises with their free, formal and informed consent, and that such consent be authenticated by conditions of work approximating a free labour relationship. The Committee trusts that the Government will be able to provide information on the progress made in this regard and requests it to continue to provide information on the number of prisoners working in entrepreneur workshops inside prison premises and on the level of the remuneration granted to these prisoners and their conditions of employment.***

The Committee is raising other matters in a request addressed directly to the Government.

Gibraltar

C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

Observation 2016

Article 7 of the Convention. Additional compensation. According to section 16 of the Social Security (Employment Injuries Insurance) Act No. 10 of 1952, as amended, the disablement pension can be increased in cases in which a person with assessed disability of 100 per cent needs constant attendance. According to Schedule 1 to the same Act, only injuries described in items 1 to 6 are recognized to entail a disability of 100 per cent. The Committee understands that, pursuant to items 17 and 18 of that Schedule, for example, a person who has been amputated of both feet is only assessed with a disablement of 90 or 80 per cent. The Government states in its report that it considers the legislation to be in line with *Article 7* of the Convention. The Committee recalls however that the Convention does not limit the constant attendance allowance to cases of 100 per cent disability but rather considers the need for such attendance, requiring the allowance to be granted as long as the need for help by a third person subsists. ***The Committee would therefore ask the Government to explain the kind of supplementary assistance that victims of employment injury with a permanent disability of less than 100 per cent can receive and for how long if their situation requires the constant help of another person. Please specify the applicable normative texts.***

Article 9. Pharmaceutical aid. The Committee notes that, according to the Government's report, the victims of industrial accidents who are not hospitalized are liable to pay the fees for the medicine prescribed by a medical doctor in accordance with the Medical (Group Practice Scheme) Regulations. ***The Committee points out that such regulation contradicts the Convention which requires that the cost of pharmaceutical aid recognized to be necessary in consequence of occupational accidents must be defrayed either by the employer, by accident insurance institutions, or by sickness or invalidity insurance institutions. The Committee asks the Government to amend the said regulations accordingly.***

Conclusions and recommendations of the Standards Review Mechanism. The Committee notes that, at its 328th Session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 12, 17, 24, 25 and 42, to which the United Kingdom is party and which are applicable to its non-metropolitan territories, are outdated and charging the Office with follow-up work aimed at encouraging States party to these Conventions to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and/or extend the Social Security (Minimum Standards) Convention, 1952 (No. 102), to these territories, as these represent the most up-to-date instruments in this subject area. ***The Committee reminds the Government of the availability of ILO technical assistance in this regard.***

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

Articles 20 and 21 of the Convention. Failure to submit an annual report on the work of the labour inspection services. In its last comment, the Committee noted with regret that the Government had never sent an annual labour inspection report to the Office containing full information on all the subjects as required under *Article 21* of the Convention. The Committee notes that, yet again, no annual report on the work of the labour inspection services has been received this year, nor have any relevant statistics been provided which, according to the Government's indications in its previous comments, could be provided by the labour inspectorate and the health and safety inspectorate. Neither has the Government provided any information, as requested, on the difficulties encountered in preparing, publishing and communicating an annual labour inspection report under *Article 20* of the Convention. The Committee recalls that the annual labour inspection report offers an indispensable basis for the national authorities, the social partners and the ILO supervisory bodies to evaluate the results in practice of the activities of the labour inspection services and contribute to their improvement, particularly for the determination of the means necessary to improve their effectiveness. ***The Committee once again urges the Government to ensure that the necessary measures are taken by the labour inspection authority to prepare, publish and communicate to the ILO an annual labour inspection report under Article 20 of the Convention containing information on all the subjects covered by Article 21(a)–(g), and to describe such measures or any difficulties encountered in this regard.***

It requests the Government in any event to provide with its next report statistical information that is as detailed as possible on the number of labour inspectors and industrial and commercial places liable to inspection, as well as on the activities of the labour inspection services (number of inspections, infringements detected and the legal provisions to which they relate, penalties applied, number of occupational accidents and diseases reported, etc.).

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C042 - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Conformity of the national list of occupational diseases with the schedule established by the Convention. The Committee notes the Government's indication that an inter-ministerial committee has been established to examine the incorporation of the European schedule of occupational diseases into national law. On completion of its mandate on 1 February 2008, the aforementioned committee drew up a new national list of occupational diseases which is in conformity with Annex I to Commission Recommendation 2003/670/EC of 19 September 2003 concerning the European schedule of occupational diseases. Referring to the comments which the Committee has been making for many years, the Government states that the draft of the new list of occupational diseases is not restrictive, does not define the activities which can result in occupational disease, and contains a new heading relating to skin cancers. The draft of the new list must be the subject of a presidential decree signed jointly by the competent ministers before coming into force. ***The Committee notes this information with interest and requests the Government to send a copy of the new list of occupational diseases with its next report.***

Part V of the report form. Application of the Convention in practice. The Committee notes that, according to the statistical information provided by the Government, although the number of new cases of occupational disease registered each year varied between 20 and 26 cases per year during the 2001–05 period, this figure has dropped sharply since 2005. Seven cases of new occupational diseases were recognized in 2006, six in 2007, five in 2008 and four in 2009, the Government indicating that the number of registered occupational diseases refers only to diseases which give rise to the payment of an invalidity pension. ***The Committee requests the Government to explain the reasons for this significant drop in the number of new cases of recognized occupational disease and provide further information on the functioning in practice of the procedure for recognizing a disease as occupational, on the operation of the labour inspectorate, the existence of preventive measures, the number of cases where recognition was refused, etc.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C095 - Protection of Wages Convention, 1949 (No. 95)

Observation 2016

The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2016 according to which there has been no progress regarding the application of the Convention as none of the legislative provisions which were found incompatible with the Convention have been modified or repealed. The GSEE expresses serious concerns about the number of workers suffering wage arrears and the operation and financial stability of the wage guarantee fund (operating under Manpower Employment Organisation – OAED). ***The Committee requests the Government to provide comments without delay in relation with these observations.***

The Committee takes note of the adoption on 16 December 2015 of the Law No. 4354/2015 introducing wage adjustments and other emergency provisions for the purposes of implementing the budgetary objectives of the Structural Reform Agreement, which amends the Law No. 4093/2012 introducing emergency measures implementing Law No. 4046/2012 and approving the medium-term fiscal strategy 2013–16. ***The Committee will review the impact of the Law No. 4354/2015 on the application of the Convention in its next meeting.***

The Committee further notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 12. Timely payment of wages. Prompt settlement of wages upon termination of employment. In its previous comment, the Committee urged the Government to continue to take active steps in order to prevent the spread of problems of non-payment or delayed payment of wages. In addition, concerned about the wage cuts in the public sector and the reduction of the national minimum wage, the Committee urged the Government to fully consult the representative employers' and workers' organizations before the adoption of any new austerity measures. The Committee notes the information provided by the Government in its report concerning ongoing difficulties experienced in the timely payment of wages. In particular, it notes the data collected by the Labour Relations Units of the Labour Inspectorate (SEPE) on cases of non-payment or delayed payment of wages in 2013 and 2014. According to this information, while the complaints submitted for non-payment of earnings has sharply decreased in 2014 compared to 2013 and thus the number of fines imposed for non-payment of earnings has also decreased, the number of labour disputes for non-payment of earnings has slightly increased. While the Committee also notes the Government's reply referring to various provisions of the Civil Code concerning the protection of workers in case of non-timely payment of wages, in view of the data provided, it considers that the current situation continues to pose difficulties for workers and their families whose income has already been substantially decreased through the implementation of austerity measures, including reduction of wages and benefits.

With respect to the wage cuts in the public sector, the Committee notes the information provided by the Government that in compliance with various recent decisions of the Council of State, the highest administrative court of Greece, and after taking into account the current financial situation and commitments of the country, it has readjusted retroactively from 1 August 2012, the special pay scale of armed and security forces officers. Furthermore, the salaries of judges and of state legal counsel permanent staff have also been increased retroactively at the level they were before Act No. 4093/2012 entered into force. In addition, since other sections of this Act have been declared unconstitutional, wage reductions for teaching and research personnel of universities which had occurred since 2012 are being reviewed and a proposal is currently being examined to readjust the special pay scale of these workers. Finally, the Government insists on the fact that it stands against austerity policies that do not respect acquired social rights and tries to implement its programme of commitments on the basis of these considerations. In this regard, the Committee notes the Government's indication that it has recently concluded a Memorandum of Understanding with the Institutions (the "Troika", that is, the International Monetary Fund, the European Commission and the European Central Bank) to establish an advisory committee with the participation of various experts and the contribution of the ILO and the European Parliament, with a view to introducing a new legislative framework for a series of labour issues, in line with best practices of the European Social Model. ***While taking note of these positive steps, the Committee requests the Government to continue to take all possible measures, legislative or otherwise, to ensure the payment of wages on time and in full, and to provide information on the results achieved in this context. It also requests the Government to continue to provide information on the development of the situation of non-payment or delayed payment of wages, including, for instance, the amount of wages in arrears and recovered. The Committee also reiterates its previous request to the Government to ensure that employers' and workers' representatives are fully consulted before the adoption of any measures that would have an adverse impact on workers in respect of wage protection.***

The Committee hopes that the Government will make every effort to take the necessary actions in the near future.

Greece

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

The Committee notes the observations from the Greek General Confederation of Labour (GSEE), received on 1 September 2016, according to which no impact assessment of the austerity measures on the implementation of the Convention has been carried out. Moreover, the rapid growth of flexible forms of employment has led to a widening of the gender pay gap and to obstacles in women's career development.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Impact of the structural reform measures on the application of the Convention. The Committee has been examining for a number of years the austerity measures adopted in the framework of the financial support mechanism. In this context, it has requested the Government to monitor the evolution and impact of such measures on the practical application of the equal pay provisions in Act No. 3896/2010 on the implementation of the principle of equal opportunities and equal treatment of men and women in employment and occupation (section 4(1)). It has also requested the Government to monitor and evaluate the evolution and impact of the austerity measures on the remuneration of men and women in the public and private sectors with a view to determining the most appropriate measures to avoid widening the pay gap. The Committee notes the measures taken by the Government with a view to fully implementing the principle of the Convention, including the reform of the labour inspectorate, which has the competence to monitor the payment of remuneration and other benefits. The Government adds that the Directorate for Remuneration of Work of the Ministry of Labour, Social Security and Welfare did not detect any violations of the principle of equal remuneration for work of equal value or, in general, any other discrimination on grounds of sex in the text of collective agreements submitted to it. The Government recognizes, however, that wage differentials based on sex might exist where wages paid by employers exceed those stipulated in collective agreements. The Government indicates that wage differentials stemming from private agreements are not monitored by the Directorate. The Government adds that the ombudsman has considered that cuts in wages and allowances during pregnancy, maternity leave and parenting leave increase the wage gap between men and women, even in the public sector. ***Noting that the information provided does not indicate that any impact assessment has been undertaken, the Committee asks the Government to take the necessary measures without delay, in cooperation with the social partners and the Office of the Ombudsman and on the basis of adequate statistics, to monitor the evolution and impact of the austerity measures on the remuneration of men and women in the public and private sectors with a view to determining the most appropriate measures to address existing wage differentials between men and women. The Committee further asks the Government to take concrete measures to ensure that the wages and allowances of working mothers are not reduced. The Committee asks the Government to provide full information on these matters.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

The Committee notes the observations from the Greek General Confederation of Labour (GSEE), received on 1 September 2016, according to which no impact assessment of the austerity measures on the implementation of the Convention has been carried out. Moreover, the GSEE refers to a rise in discriminatory practices, especially on multiple grounds, to the detriment of women, as well as in discrimination on the grounds of ethnic and national origin, disability and age. It also refers to the fact that all tripartite social dialogue structures related to gender equality and discrimination do not function.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 3 of the Convention. Impact of the structural reform measures on the application of the Convention. The Committee has been examining for a number of years the austerity measures adopted in the framework of the support mechanism. In this context it has requested the Government to monitor the impact of such measures on the employment of men and women, including those from religious and ethnic minorities, in both the public and the private sectors, so as to address any direct or indirect discrimination based on the grounds provided for in the Convention. The Committee notes the information provided by the Government concerning the implementation of Act No. 4024/2011 which provides for the automatic termination of different categories of employees and the placing of some employees in some categories in the "labour reserve" (that is employees on open ended private law contracts) and Act No. 4093/2012 which provides for civil service mobility, as well as the conversion from full time to part time and rotation work contracts in the private sector, which are addressed in detail in the direct request. The Committee further notes that the Greek National Commission for Human Rights (NCHR) highlighted the importance of assessing the adverse consequences of the multiple austerity measures on the employment and social security rights of large segments of the population and called on the Government to end the flexibilization of employment relationships in the private and the public sectors (NCHR conclusions adopted by the Plenary of 27 June 2013). Moreover, the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights recommended the conducting of human rights impact assessments to identify potential negative impacts of the adjustment programme and the necessary policies to address such impacts (A/HRC/25/50/Add.1, 27 March 2014, paragraph 91).

The Committee notes that the information provided by the Government does not indicate that any impact assessment of the structural reform measures or of the National Equality Policy on the Employment of Men and Women has been undertaken. The Committee highlights the importance of regularly assessing, with a view to reviewing and adjusting, existing measures and strategies on a continuing basis in order to better promote equality and evaluate their impact on the situation of the protected groups and the incidence of discrimination. Furthermore, the Committee considers that it is essential that measures of an economic or political nature do not undermine the principles of equality and non-discrimination or adversely affect the progress achieved by previous action taken to promote equality (see General Survey on the fundamental Conventions, 2012, paragraph 847). ***The Committee requests the Government to take without delay the necessary measures, in cooperation with the social partners and the Office of the Ombudsman, to evaluate the impact of the austerity measures on equality of opportunity and treatment in both public and private sector employment with a view to determining the most appropriate measures to address any direct or indirect discrimination based on sex with respect to access to employment and occupation, terms and conditions of employment, and security of employment. The evaluation of the impact of the austerity measures should also focus on the employment situation of ethnic and religious minorities such as Roma and Muslims as well as migrant workers who are particularly vulnerable to the impact of the economic crisis. The Committee requests the Government to provide full information in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2016

The Committee notes the observations made by the Greek General Confederation of Labour (GSEE), received on 1 September 2016. The GSEE has been raising the same concerns since 2010, namely that the Government's imposition of austerity measures as part of the implementation of the country's international loan agreement, as well as the intervention of third parties in national policies, has resulted in the violation of the provisions of the Convention. The GSEE stresses that no progress has been made with regard to the application of the Convention. Moreover, the legislative provisions which were found to be incompatible with the Convention have not been modified or repealed, no assessment has been carried out to determine the impact of the austerity measures on the implementation of the Convention, and most of the tripartite social dialogue structures are either not functioning or are underperforming. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Employment policy measures implemented under the adjustment programme. The Government indicates in its report that the Economic and Social Council of Greece has been assigned to prepare an integrated action plan on employment policies. The aims of the plan are as follows: (a) upgrading the employment promotion centres in order to better match the unemployed with available vacancies; (b) enhance the effectiveness of training programmes for the unemployed and seek training for the unemployed from businesses; and (c) replenish reduced working hours with training. Unemployment has significantly increased during the last few years amid the prolonged recession. Unemployment was measured at 27.6 per cent in May 2013 compared to 23.8 per cent in May 2012. Alarmingly, the unemployment rate of young people aged 15–24 has continued to increase from 55.1 per cent in May 2012 to 64.9 per cent in May 2013. The Government indicates that the limited possibility of exit from unemployment is also reflected in the increase in long term unemployment from 3.6 per cent in 2008 and 5.7 per cent in 2010 to 14.4 per cent in 2012 – a very high percentage when compared to the EU-27 average (4.6 per cent in 2012). The employment rate (ages 20–64) in 2012 stood at 55.3 per cent. The number of employed persons during the first quarter of 2013 amounted to 3,596,000, recording a drop of 6.3 per cent compared to the first quarter of 2012. During the reporting period a series of laws have been adopted to reduce labour costs and to promote flexibility in the labour market in order to respond to the challenges of the economic crisis. The conversion of the labour market contracts of full employment to part-time employment or rotation work has contributed to job retention or has prevented job losses. According to data from the Hellenic Statistical Authority (ELSTAT), the part-time employment rate in Greece reached 8.6 per cent of the workforce during the first quarter of 2013 from 7.2 per cent in the corresponding quarter in 2012. With respect to active labour market policies, the Committee notes that since 2010 more than 1,291,597 persons, either as employees, self-employed or as trainees, have benefited from 74 Greek Manpower Employment Organization (OAED) programmes for job retention, promotion of employment or training, of a total budget of €3.87 billion. It is estimated in this regard that the total number of beneficiaries of these programmes upon completion will reach 1,471,829 persons. The Committee also notes the employment and training programmes implemented by the OAED for the strengthening of the employment situation of young persons, women, the long-term unemployed and other groups affected by the crisis. ***Taking into account the persistent high levels of unemployment and youth unemployment, the Committee once again invites the Government to further specify how, pursuant to Article 2 of the Convention, it keeps under review the employment policies and measures adopted in order to pursue the objectives of full, productive and freely chosen employment, in consultation with the social partners. The Committee also invites the Government to provide information on the results of the measures adopted to address youth unemployment and long-term unemployment in the country.***

Education and training policies and programmes. The Committee notes the information provided by the Government on the application of the Human Resources Development Convention, 1975 (No. 142), indicating that the National Organization for the Certification of Qualifications and Vocational Guidance (EOPPEP) was established in November 2011 following the merging of three entities. The Operational Programme on Human Resources Development includes a budget of €2.74 billion and is the most important financing tool of the Ministry of Labour, Social Security and Welfare for the implementation of the strategy and policies on human resources development and achievement of social cohesion. Actions being implemented under this Programme include training of workers in enterprises by providing an educational allowance; continuing vocational training programmes; vocational training programmes for the unemployed through the use of training vouchers; vocational training for vulnerable social groups; and labour market entry vouchers for unemployed people up to 29 years of age. It also includes the development and implementation of an integrated system for the identification of the labour market needs. ***The Committee invites the Government to provide information on the impact of education and training measures in terms of obtaining lasting employment for young persons and other groups of vulnerable workers. Please also include information on the progress made to activate the National System for Linking Vocational Education and Training with Employment (ESSEEKA).***

Modernization of labour market institutions. The Committee notes that the reorganization of labour market institutions, which includes all systemic interventions contributing to the reform and functional integration of institutions of the labour market, has been included in the Operational Programme on Human Resources Development. The Government indicates that the development of theses systemic interventions has started since 2011 and is still in progress. In this respect, the Committee refers to its direct request on the Employment Service Convention, 1948 (No. 88). ***The Committee invites the Government to provide further information on the effectiveness of the reorganization of its labour market institutions.***

Article 3. Participation of the social partners. The Committee notes that the Ministry of Labour, Social Security and Welfare established the National Committee for Social Dialogue in September 2012. The first stage of social consultation was about addressing the critical problems and distortions of the labour market (unemployment, undeclared work, insurance contribution evasion, non-wage costs and bureaucracy, reforming the minimum wage fixing mechanism). During the second phase of consultations, ways to manage the challenges of the labour market have been sought, including youth employment. The Committee further notes the information concerning the tripartite consultations held in various committees, including the National Committee for Employment. ***The Committee invites the Government to continue to provide information on the manner in which account is taken of the opinions and experiences of the representatives of employers' and workers' organizations in the formulation and implementation of the measures required by the Convention.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

The Committee notes the observations from the Greek General Confederation of Labour (GSEE) received on 1 September 2016 according to which no impact assessment of the austerity measures on the implementation of the Convention has been carried out. Moreover, there has been a continuous reduction of the available day-care structures for children and dependent persons.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee recalls the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It recalls the report of the high-level mission of the ILO which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the International Monetary Fund in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

Impact of the measures on the application of the Convention. The Committee notes that the majority of measures in the framework of structural reforms that impact on gender equality, including workers with family responsibilities, have been addressed under the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and it refers to its comments on these Conventions for a more detailed analysis. The Committee recalls the observations made by the Greek General Confederation of Labour (GSEE) dated 29 July 2010 and 28 July 2011 that due to the austerity measures, the burden of family responsibilities on women increased due to gender stereotypes and as a result of uneven sharing between men and women of child and family care responsibilities; and the risk of abusive practices against workers with family responsibilities may also have increased. The Committee notes from the Annual Report 2010, of the Office of the Ombudsperson that the main problems identified in the complaints lodged in 2010 concerning workers with family responsibilities include the following: (i) legislation and collective agreements reflect an obsolete perception of gender roles in family and work with respect to parental leave; (ii) the financial crisis has highlighted and exacerbated an evident setback in protecting women's labour rights; and (iii) in the context of the financial crisis, the public administration tends to interpret the law which governs maternity benefits narrowly.

Article 4 of the Convention. Leave entitlements. The Committee recalls that the national general collective agreement and certain sectoral agreements contained provisions aimed at safeguarding the rights of workers with family responsibilities. With respect to the impact of the measures taken in the framework of the support mechanism on industrial relations and collective bargaining, the Committee refers to its comments on Convention No. 98. It notes the Government's indication that section 6 of the National General Collective Labour Agreement 2008–9 provides that all provisions concerning the protection of workers with family responsibilities shall also apply to foster parents, in addition to biological or adoptive parents. The Committee also recalls that section 53(3) of the Civil Servants Code (Act No. 3528/2007) limits the use of the right to childcare leave (reduced working hours or a nine-month period of paid leave) by male civil servants whose spouse is not working, to cases in which the spouse is not capable of caring for children due to serious illness or other disabilities. The Committee notes the Government's indication concerning section 53(2) of Act No. 3528/2007 that when both parents are civil servants, they should state which will use the right to childcare leave. It also notes the Government's indication that pursuant to section 18 of Act No. 3801/2009, maternity leave is extended for multiple pregnancies, and a two-day childbirth leave is provided for fathers, and that pursuant to section 37(4) of Act No. 3986/2011, when both parents are civil servants, both parents are entitled to leave without pay up to a total of five years for raising a child up to the age of 6. The Committee further notes the Government's indication that pursuant to sections 48–54 of Act No. 4075/2012, both working fathers and mothers, as well as adoptive parents, are now entitled to four-months' unpaid leave until the child reaches the age of 6, and biological, adoptive and foster parents are granted unpaid parental leave for nursing their children due to their illness or accident. ***The Committee asks the Government to provide information on the practical application of the provisions concerning leave entitlements for workers with family responsibilities under Act No. 3528/2007, Act No. 3986/2011, and Act No. 4075/2012, including statistical information on the extent to which men and women workers, respectively, make use of family-related leave entitlements both in the private and public sectors.***

Article 5. Childcare and family services and facilities. With respect to Act No. 3863/2010 on the "New social security system and relevant provisions", which increased the pensionable ages for mothers and widowed fathers, the Committee previously asked the Government to provide information on the measures taken to ensure adequate, affordable and accessible childcare services and facilities, as means to assist male and female workers to reconcile work and family responsibilities and to remain in the labour market. The Committee notes the Government's indication that family responsibilities put pressure on women in relation to their working hours, which creates obstacles to their access to employment and their participation in the labour market on equal terms with men, and that the Government intends to provide childcare services and facilities to tackle this issue. Since July 2008, female workers receive a voucher which provides care services for babies, children and persons with disabilities. In the school year 2010–11, 23,013 children were placed in approximately 770 facilities, such as baby-care centres, kindergartens, and centres for children with disabilities. The Government also indicates that in addition to public facilities, there are baby-care centres and kindergartens operated by 36 charity organizations, churches and non-profit organizations, as well as 1,100 private baby-care centres. ***The Committee asks the Government to continue to provide information on the measures taken and the results achieved in providing sufficient, accessible and affordable childcare services and facilities, for both male and female workers, and parents wishing to enter or re-enter the labour force, as well as statistical information on the number of existing childcare facilities (private and public) and their capacity. The Committee also asks the Government to consider providing vouchers for care services to men and women workers with family responsibilities on an equal footing.***

Articles 6, 7 and 8. Measures to enable re-entry and remaining in the labour market, educational programmes, and termination of employment. The Committee recalls that Act No. 3896/2010 (section 20) and Act No. 3996/2011 provide specific protection against unfair dismissal and extend to 18 months the period of time during which working mothers cannot be dismissed after their return from maternity leave. It also recalls the information provided by the Office of the Ombudsperson, during the high-level mission, that in particular working mothers returning from maternity leave have been offered part-time and rotation work. The Committee notes the statistical information provided by the Government on the number and rate of workers with children in full-time and part-time employment both in the private and public sectors in 2011. In part-time employment, women constituted 61 per cent of workers with children up to 5 years of age, and 76 per cent of workers with children older than 5 years of age. The Committee also notes the information provided in the Annual Report 2010 of the Office of the Ombudperson that it has investigated more than 70 complaints by public officials concerning failure to grant nine-months' parental leave to male workers, whose spouse is either self-employed or unemployed. The Committee also notes the information in the Annual Report 2010 that in the public sector, discrimination due to parental leave constituted 21.81 per cent of all discrimination cases, and were mainly regarding the right to parental leave taken by fathers; in the private sector, discrimination due to pregnancy and maternity leave constituted 16 per cent of all discrimination cases. The rate of direct discrimination was 39.5 per cent, which according to the Annual Report 2010 reflected the rapid increase in the number of complaints relating to the dismissal of pregnant women. ***The Committee asks the Government to make every effort to ensure that the progress achieved by previous action taken to address the needs of workers with family responsibilities in respect of access to free choice of employment, vocational training, terms and conditions of work and social security, as well as childcare and family services, will not be adversely affected by the financial crisis and the measures taken to address it. The Committee also asks the Government to intensify its efforts to promote a broader understanding of the principle of gender equality and awareness of the rights and needs of workers with family responsibilities, to address gender stereotypes regarding the role of men and women with respect to family responsibilities, and to provide information on any progress made in this respect. The Committee further asks the Government to continue to provide information, disaggregated by sex, on the number of workers with family responsibilities affected by rotation work and part-time work, including working mothers returning from maternity leave whose contracts have been converted into part-time contracts and on whom the employer has unilaterally imposed rotation work or part-time work. Please provide information on cases of direct or indirect discrimination, including termination of employment, concerning family responsibilities that have been addressed by the Office of the Ombudsperson, the labour inspectorate services and the courts.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ireland

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

Articles 10 and 16 of the Convention. Sufficient number of labour inspectors and adequate coverage of workplaces by labour inspection. In its previous comment, the Committee noted that the number of labour inspectors working within the National Employment Rights Authority (NERA) had decreased from 132 in 2008 to 108 in 2010, and that the number of labour inspections, as a result of this reduction, had decreased from 8,859 in 2009 to 5,591 in 2011. The Committee notes the Government's indication, in reply to the Committee's request, that the reasons for this reduction are due to the moratorium introduced in 2009 on recruitment and promotion in the public sector. While the Committee notes that the Government has provided the requested information on the recruitment of labour inspectors with specific language skills, it also observes that no information has been provided on the current number of labour inspectors working within the Workplace Relations Commission (WRC) and the Health and Safety Authority (HSA).

In its previous comment, the Committee also noted the Government's reference to the identification of non-compliance risk areas as a measure to achieve improved coverage of workplaces by labour inspections. In this respect, the Committee welcomes the details provided by the Government on the factors for identifying high-risk sectors or workplaces including, among other things, statistics on previous compliance levels and those obtained from the tax and social security authorities; and sectors known for low payment levels, long working hours, precarious working conditions, or a high incidence of migrant workers. ***The Committee requests that the Government provide information on the human resources strategy pursued to achieve the satisfactory coverage of workplaces by labour inspections. The Committee also requests the Government to provide statistical information on the number of labour inspectors working at the WRC and the HSA, the inspection visits undertaken by these bodies (including the number of routine inspection visits, targeted inspection visits at high-risk sectors and workplaces and visits in response to a complaint), and the ratio of all workplaces covered by labour inspections.***

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention (hereinafter the Conference Committee). The Committee observes that the Conference Committee welcomed the introduction of the Industrial Relations (Amendment) Act 2015 (No. 27). While noting the Government's indication that it had submitted a report on the application of the Convention in April 2016, the Conference Committee expressed disappointment that a report had not been provided in time for the Committee of Experts' review. The Conference Committee further noted that this case related to issues of European Union (EU) and Irish competition law. To this end, it suggested that the Government and the social partners identify the types of contractual arrangements that would have a bearing on collective bargaining mechanisms. The Committee notes the information in the Government's report which acknowledged the rich discussion that had taken place in the Conference Committee and the conclusions that were adopted.

The Committee takes note of the observations provided by the Irish Congress of Trade Unions (ICTU) in a communication received on 31 August 2016 concerning the matters discussed in the Conference Committee and as regards the need to ensure better protection of the rights of freedom of expression and the right to form and join trade unions. ***The Committee requests the Government to provide its comments on this latter point with its report due next year under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).***

The Committee takes note generally with ***interest*** of the information provided by the Government in relation to the new Industrial Relations Act which strengthens the statutory code on victimization to explicitly prohibit inducements to forgo trade union representation, thus addressing issues raised by the ILO Committee on Freedom of Association in the context of a complaint concerning Ireland. The Act further provides for the reinstatement of collective bargaining registered employment agreements at the enterprise level and for new sectoral employment orders. The Committee further notes with ***interest*** the information provided concerning the adoption of the Workplace Relations Act in 2015 which streamlined five workplace relations bodies into two, greatly simplifying the system and facilitating access for those seeking to vindicate their rights.

Article 4 of the Convention. Promotion of collective bargaining. Self-employed workers. In its previous comments, the Committee invited the Government to hold consultations with all the parties concerned with the aim of limiting the restrictions to collective bargaining that had been created by the Competition Authority's decision to declare unlawful a collective agreement between Equity/SITP and the Institute of Advertising Practitioners that fixed rates of pay and conditions of employment for workers within radio, television, cinema and the visual arts, so as to ensure that self-employed workers may bargain collectively. The Committee notes the information provided by the Government explaining the historical circumstances of the exclusion of the agreement on fees that had been established between Actors Equity/SITP and the Institute of Advertising Practitioners in Ireland and the Competition Authority's decision not to reconsider its position annulling this agreement when requested to do so after the European Court of Justice decision of 4 December 2014 *(FNV Kunsten Informatie en Media* v. *Staat der Nederlanden).* The Committee further notes, however, the Government's recognition of the need to protect vulnerable workers and the multifaceted challenges raised with respect to the issue presented by false self-employment. Finally, the Committee notes with ***interest*** the Government's indication that the Labour Party introduced a Private Members Bill to the Parliament proposing to amend the Competition Act 2002 to establish rights for self-employed individuals to be represented by a trade union for the purposes of collective bargaining and price-setting. The Government has acknowledged that the Bill is motivated by the need for protection of vulnerable self-employed workers such as voice-over actors and freelance journalists and accepted the Bill in principle subject to some amendments to address the policy objective in a more targeted way that would be consistent with Irish and EU competition law. The amendments are expected to be considered shortly by the Government and the Senate and the Government will provide the Committee with an update on developments. ***The Committee welcomes these latest developments aimed at the protection of vulnerable self-employed workers through trade union representation for the purposes of collective bargaining, including as regards prices, and requests the Government to provide information on developments in the Parliament and a copy of the amended Bill.***

Ireland

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Equality of opportunity and treatment for men and women. In its previous comments, the Committee expressed concern that article 41.2 of the Constitution, which provides that "the State recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and that "the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home", might encourage stereotypical treatment of women in the context of employment, contrary to the Convention, and requested the Government to consider reviewing it. The Committee notes the information provided by the Government on the establishment in 2012 of a Constitutional Convention, made up of 66 citizens, 33 parliamentarians, and an independent chairperson, to make recommendations on constitutional reform, including with regard to article 41.2. It welcomes the Government's indication that a sizable majority of members of the Constitutional Convention voted in favour of amending article 41.2, as well as other provisions in the Constitution with a view to adopting gender-neutral language. The Committee notes, however, that providing that "[carers] shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home", while aiming at recognising the role of caregivers in society, is likely to apply mainly in practice to women, who, according to the Government's report under the Equal Remuneration Convention, 1951 (No. 100), are responsible for more than 80 per cent of family-related tasks. The Committee considers that in the absence of further measures aimed at assisting both men and women to reconcile work and family responsibilities, and encouraging men to take on a greater share of family responsibilities, the provision may continue to hinder the inclusion or re-entry of women in the labour market. ***The Committee asks the Government to take the opportunity of the current constitutional review process to ensure that the Constitution, including article 41.2, does not encourage, directly or indirectly, stereotypical treatment of women in the context of employment and occupation, and to provide information on specific steps taken in this regard. The Committee also asks the Government to provide information on measures taken or envisaged to promote equality of opportunity and treatment for men and women, including with regard to access to the labour market and reconciliation of work and family responsibilities.***

Article 1(1)(a). Discrimination based on political opinion or social origin. The Committee recalls its previous comments, in which it noted that the grounds of discrimination provided for in the Employment Equality Act do not cover political opinion and social origin. The Committee notes the Government's repeated statement that there are no immediate plans to amend the equality legislation so as to include social origin and political opinion as prohibited grounds of discrimination. ***The Committee asks the Government to take steps to ensure legislative protection against discrimination in employment and occupation based on political opinion and social origin, and to provide information on the progress made in this regard. The Committee also asks the Government to provide information on the measures taken to ensure protection against discrimination based on political opinion and social origin in practice.***

Article 1(2). Inherent requirements of the job. The Committee has previously noted that section 2 of the Employment Equality Act excludes from the Act's scope of application with regard to access to employment "persons employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons". The Committee pointed out that, in practice, the broad and non-exhaustive definition of "personal services" in section 2 appeared to allow employers of domestic workers to make recruitment decisions on the basis of the grounds of discrimination set out in section 6(2) of the Act. The Committee recalls that the Convention is intended to promote and protect the fundamental right to non-discrimination and equality of opportunity and treatment in employment and occupation of all workers and that it only allows for exceptions to the principle of equal treatment in so far as they are based on the inherent requirements of a particular job, as strictly defined, and that there are very few instances where the requirements of a job are justified with reference to the grounds listed in the Convention. The Committee recalls further that overly broad exceptions to equality legislation excluding domestic workers from the protection against discrimination in respect to access to employment may lead to discriminatory practices by employers against these workers, contrary to the Convention. ***The Committee urges the Government to take steps to amend the relevant parts of section 2 of the Employment Equality Act, so as to ensure that any limitations on the right to non-discrimination in all aspects of employment and occupation are restricted to the inherent requirements of the particular job, as strictly defined.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Employment policy measures implemented under the adjustment measures. Participation of the social partners. The Government indicates that the unemployment rate was 14 per cent in March 2013 and, while it has fallen from 15 per cent in February 2012 after several years of increases, the rate still remains unacceptably high. It adds that it is of additional concern that long-term unemployment accounted for 60 per cent of total unemployment in the fourth quarter of 2012, and for 46 per cent of the unemployed under the age of 25. The Committee notes that the Government is tackling unemployment and the stabilization of the employment rate through the twin strategies of the Action Plan for Jobs and Pathways to Work. The former is a multi-annual process aiming to have 100,000 more people in work by 2016 and 2 million people in work by 2020 through the introduction of additional employment supporting measures. It includes landmark projects which have been selected because of their potentially significant impact on job creation. The latter, which was launched in February 2012, introduced a new integrated employment and support service involving the transformation of local social welfare offices into a "one-stop-shop" (called INTREO) allowing jobseekers to access their entitlements and get help with planning their return to work. The Government indicates that in 2013 a renewed focus will be given to targeting activation places to the long-term unemployed. It further indicates, in reply to the Committee's previous observation, that the abovementioned twin strategies provide a wide range of specific measures which are complementary to ongoing efforts to address labour market bottlenecks. Moreover, the Committee notes that the social partners were invited to contribute to the preparation of an update on progress of the employment target, which was prepared for the European Commission. The Government also indicates that extensive consultations were held with employers during the preparation of the Action Plan for Jobs and that six industry partners were nominated to partner with government to implement reforms contained in the 2013 Action Plan for Jobs. ***Noting the high level of long-term unemployment, the Committee invites the Government to indicate the manner in which Article 2 of the Convention is applied, by providing information on the manner in which employment policy measures are decided on and kept under review within the framework of a coordinated economic and social policy. It also invites the Government to provide updated information on the impact of its active labour market measures adopted in order to address long-term unemployment and youth unemployment. Please also continue to provide information on the consultations held with the social partners concerning employment policy measures (Article 3).***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ireland

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Observation 2016

Article 5 of the Convention. Effective tripartite consultations. The Government indicates in its report that it continues to comply with the Convention, noting that a good relationship has been built over the years with representative employers' and workers' organizations. Officials from the Irish Department of Jobs, Enterprise and Innovation meet with the national social partners regularly throughout the year, including consulting in relation to ILO matters, as appropriate. Moreover, no decision is made on the ratification or acceptance of Conventions or Recommendations before the Oireachtas (Parliament) prior to receiving the views of the representative employers' and workers' organizations. The Committee notes that all remaining instruments have been submitted to the Oireachtas, namely those adopted by the Conference at 11 sessions held from June 2000 to June 2015 (88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 101st, 103rd and 104th Sessions). It further notes with ***interest*** that Ireland ratified the Maritime Labour Convention, 2006 (MLC, 2006), in July 2014, and the Domestic Workers Convention, 2011 (No. 189), in August 2014. ***The Committee requests the Government to provide full particulars on the content and outcome of the consultations held on each of the matters related to international labour standards listed in Article 5(1) of the Convention.***

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Article 3 of the Convention. Worst forms of child labour. Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee previously noted that the Child Care Act protects children from the use of drugs but not from being used, procured or offered for the trafficking of drugs. It also noted that the Child Care (Amendment) Act of 2007 contains no provisions prohibiting the use, procuring or offering of a child for the production and trafficking of drugs. The Committee requested the Government to indicate whether legal provisions exist prohibiting the use, procuring or offering of a child for illicit activities, including the production and trafficking of drugs.

The Committee notes with ***satisfaction*** that the Criminal Law (Human Trafficking) (Amendment) Act of 2013 expands the definition of "exploitation" to include forcing a person, (including a child under the age of 18 years) to engage in an activity that constitutes an offence. In this regard, the Committee notes that section 4 of the Misuse of Drugs Regulation (S.I. No. 328/1988), the Criminal Justice Act, 1999 (section 15A) and the Criminal Justice (Psychoactive Substances) Act, 2010 (section 3) make it an offence to produce, possess, supply, export or import controlled drugs and psychoactive substances.

The Committee is raising other matters in a request addressed directly to the Government.

Isle of Man

C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

Observation 2016

Articles 9 and 10 of the Convention. Cost-sharing with respect to medicines and appliances. For many years, the Committee has been pointing to the fact that the ongoing practice to require victims of industrial accidents, apart from a few exceptions, share in the costs of the medical care and supplies which they receive, is contrary to the Convention. In 2011, on the occasion of the review of these exceptions, the Committee expressed the hope that the Government would reduce the cost-sharing requirements so as to at least not cause any hardship for persons of small means who fall victims of industrial accidents. ***As the report does not include any new information in this regard, the Committee reiterates its request to bring the national legislation and practice into conformity with the Convention and to indicate any additional exceptions to cost-sharing considered under the review process.***

Conclusions and recommendations of the Standards Review Mechanism. The Committee notes that, at its 328th Session in October 2016, the Governing Body of the ILO adopted the conclusions and recommendations formulated by the Standards Review Mechanism Tripartite Working Group (SRM TWG), recalling that Conventions Nos 12, 17, 24, 25 and 42, to which the United Kingdom is party and which are applicable to its non-metropolitan territories, are outdated and charging the Office with follow-up work aimed at encouraging States party to these Conventions to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and/or extend the Social Security (Minimum Standards) Convention, 1952 (No. 102), to these territories, as these represent the most up-to-date instruments in this subject area. ***The Committee reminds the Government of the availability of ILO technical assistance in this regard.***

Italy

C181 - Private Employment Agencies Convention, 1997 (No. 181)

Observation 2016

Articles 11 and 12 of the Convention. Protection for workers employed by private employment agencies. In its previous observation, the Committee requested the Government to indicate how adopted measures have ensured adequate protection for workers in temporary work agencies working for user enterprises. The Committee also recalls in this regard the matters previously raised by the Italian General Confederation of Labour (CGIL) which reflected concern that fair treatment for agency workers was not ensured with regard to their working and employment conditions. The Government describes in its report the legislative changes that have occurred since its last report. In this regard, it indicates that Legislative Decree No. 81 of 15 June 2015 contains the current legal framework in the field of private employment agencies. In particular, reference is made to sections 35, 36 and 37 governing matters relating to the protection of temporary agency workers. The Committee notes that section 35(1) of Legislative Decree No. 81 provides that, for the duration of their assignment at a user enterprise, temporary agency workers are entitled to economic conditions that are not less favourable than employees of the user enterprise working in a similar position. With regard to freedom of association, the Committee notes that section 36(2) of Legislative Decree No. 81 provides that temporary agency workers may exercise freedom of association during their assignment at a user enterprise and may participate in trade union meetings alongside workers of the user enterprise. The said Decree also provides in its section 37(1) that social security, pension, insurance and welfare contributions are borne by the private employment agency. ***The Committee requests the Government to continue to provide information on the impact of the measures taken to ensure adequate protection for workers employed by private employment agencies, in accordance with Articles 11 and 12 of the Convention.***

Article 13. Cooperation between the public employment service and private employment agencies. Application of the Convention in practice. The Committee notes that, according to Legislative Decree No. 150 of 14 September 2015, the National Agency for Active Employment Policies (ANPAL) is the new authority that grants authorizations for the operation of private employment agencies. In reply to the previous comments requesting information demonstrating that the views of the social partners have been taken into account concerning the measures taken to promote cooperation between the public employment service and private employment agencies, the Government indicates that it carried out extensive consultations with the social partners when elaborating Legislative Decree No. 276 of 10 September 2003 establishing private employment agencies. Moreover, with regard to the request for information on the application of the Convention in practice, that is, in relation to the number of workers covered by the measures giving effect to the Convention and the number and nature of infringements reported in relation to the activities of private employment agencies (*Articles 10* and *14* and Part V of the report form), the Government indicates that, at present, the required information is not yet available. ***The Committee requests the Government to provide information on the measures taken to promote cooperation between the public employment service and private employment agencies and on the activities of the National Agency for Active Employment Policies in this regard. The Committee also once again requests the Government to provide information on the application of the Convention in practice, including the number of workers covered by the measures giving effect to the Convention (specifying the type and duration of their employment arrangements), and the number and nature of infringements reported in relation to the activities of private employment agencies.***

Jersey

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. The Committee recalls that its previous comments referred to certain provisions of the Employment Relation Law (ERL) and codes of practice concerning the exercise of the right to strike (right to secondary action and social and economic protests – see section 20(3) of the ERL and Code 2; picketing – Code 2; compulsory arbitration – sections 22 and 24 of the ERL and Code 3; essential services – Code 2; and conditions for protected industrial action and the application by the courts of sections 3 and 20(2) of the ERL and Code 3).

The Committee notes the Government's indication that the ERL had been drafted following extensive consultations and that it achieved its purpose to create a modern, non-adversarial dispute resolution system, as attested by the lack of industrial action and the increase in the signing of collective agreements. The Government reports that in practice Jersey continues to have a very good industrial relations record and that the Jersey Advisory and Conciliation Service informs that both employers' and workers' organizations find the legislation and codes of practice to provide an effective framework. The Committee further notes that the Government indicates that a review of the ERL and its codes of practice is included in the programme of work of the Minister for Social Security. However, and while acknowledging the previous comments of the Committee, the Government regrets to inform that to date it has not been possible to carry out the review. The Government indicates that a political decision was taken to focus resources first on the preparation of new legislation to protect from discrimination, which came into force in September 2015, and that the review of the ERL will be undertaken as soon as resources allow for it.

In these circumstances, the Committee requests the Government to provide information on any development concerning the review of the ERL and its codes of practice, trusting that it will take into account the Committee's previous comments and hoping that it will soon be able to report progress.

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee had noted that according to sections 77B and 77C of the Employment (Amendment No. 4) (Jersey) Law, 2009, the Tribunal does not have the power to compensate an employee for financial losses such as arrears of pay for the period between the dismissal and the order for reinstatement or re-employment. The Committee had invited the Government to pursue dialogue with the social partners in order to ensure that in cases of anti-union dismissals, workers reinstated by the judicial authority would be granted full compensation for loss of pay.

The Committee notes that the Government recalls that, under the legislation in force, an award for unfair dismissal is based on salary and length of service and there is no option for an employee to seek additional compensation for financial losses following an unfair dismissal. The Government indicates that an increase in the compensation would have ramifications for the Tribunal system – while the Tribunal currently operates a simple procedure and is thus accessible to its users, most of whom litigate on their own behalf, high value claims would be more time consuming and legalistic and may require separate remedies hearings. The Government further notes that since the Employment Law came into force on 1 July 2005 there have been no Tribunal complaints of unfair dismissal or selection for redundancy on the grounds of trade union membership or activities and that, therefore, there have been no related orders for reinstatement or re-engagement resulting from these circumstances.

The Committee recalls that, in cases of reinstatement following an anti-union dismissal, remedies should also include retroactive wage compensation for the period that elapses between dismissal and the reinstatement, as well as compensation for the prejudice suffered, with a view to ensuring that all of these measures taken together constitute a sufficiently dissuasive sanction, as "adequate protection" under *Article 1(1)* of the Convention. ***The Committee thus once again invites the Government to enter into dialogue with the social partners in order to ensure that in cases of anti-union dismissals, workers reinstated by the judicial authority may be granted full compensation for loss of pay.***

Articles 2 and 4. Adequate protection against acts of interference and promotion of collective bargaining. In its previous comments, the Committee had noted that there were no specific provisions protecting against acts of interference in the Employment (Jersey) Law (EL) or the Employment Relation Law (ERL), but that it was the Minister's intention to introduce via the ERL a positive duty to prohibit employers from "buying out" employees' rights in respect of union activities by inducing employees not to join a workers' organization, or to relinquish membership of such an organization. Moreover, the Committee had requested that Code 1 on the recognition of trade unions be amended in order to guarantee the right to collective bargaining of the most representative organization of the bargaining unit and to ensure that, where no union represents the majority of employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members. The Committee had noted the Government's indication that a provision to prohibit employer inducements would be drafted and that Code 1 would be reviewed in relation to the Convention as part of the proposed wider review of the ERL and codes of practice. The Committee had requested the Government to provide information on any developments. The Committee notes that the Government informs that there has not been any progress to date and, regretting the delay, indicates that work will be undertaken as soon as resources allow it. ***The Committee expresses its firm hope, once again, that the Government will soon be in a position to indicate progress made with regard to reviewing the provisions of the ERL and the accompanying draft codes of practice, in light of the Committee's previous comments and to ensure the full enjoyment of all rights and guarantees under the Convention.***

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Committee notes the observations on the application of the Convention by the International Trade Union Confederation (ITUC) received on 1 September 2016 and of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) received on 25 November and 5 December 2016. It further notes the observations of the International Organisation of Employers (IOE) received on 1 September 2015, which are of general nature. In its previous comments, the Committee had also noted the observations of the Confederation of Free Trade Unions of Kazakhstan (CFTUK) (now, the KNPRK), as well as the Government's failure to reply. ***The Committee deeply regrets that the Government still has not provided its comments in reply to these longstanding observations and firmly trusts that it will provide complete comments thereon without delay. The Committee also requests the Government to respond to the more recent observations of the ITUC and the KNPRK referenced above.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee), in June 2016 concerning the application of the Convention. The Committee notes the Conference Committee's request to the Government to: (i) amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan, without any further delay; (ii) amend the provisions of the Law on Trade Unions, in particular sections 10–15, which limit the right of workers to form and join trade unions of their own choosing; (iii) amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one; (iv) indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" and indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Labour Code; (v) amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; (vi) amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization; and (vii) accept ILO technical assistance to implement the above noted conclusions. The Conference Committee considered that the Government should accept a direct contacts mission (DCM) this year in order to follow-up on these conclusions.

The Committee notes the report of the DCM, which visited the country between 19 and 22 September 2016. It further notes the entry into force on 1 January 2016 of the new Labour Code.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously urged the Government to take the necessary measures to amend its legislation so as to ensure that judges, firefighters and prison staff have the right to establish organizations for furthering and defending their interests in line with the Convention.

As regards the judiciary, the Committee notes the Constitutional Council Ruling No. 13/2 of 5 July 2000 providing for an official interpretation of paragraph 2 of Article 23 of the Constitution. According to the Council, in accordance with paragraph 1 of Article 23 of the Constitution, "judges, like all citizens of the State, have the right to freedom of association to further and defend their professional interests, as long as they do not use the associations to influence the administration of justice and to pursue political goals. … The prohibition imposed on judges to become members of trade unions provided for by … the Constitution does not imply the restriction on their right to establish other associations and membership in other voluntary associations". The Committee notes from the report of the DCM, that the Union of Judges, while not a trade union registered pursuant to the Law on Trade Unions, it is an organization which represents the interests of judges and which can raise, and has raised in the past, issues relating to working conditions and pension.

Regarding prison staff and firefighters, the Committee notes from the DCM report that among the employees of the law enforcement bodies, only employees who have a (military or police) rank are prohibited from establishing and joining trade unions (sections 1(9) and 17(1)(1) of the Law on Law Enforcement Service (2011)), and that under the current system, prison staff and firefighters who have the status of officers are ranked. The Committee notes from the DCM and the Government's reports that all civilian staff engaged in the law enforcement bodies can establish and join trade unions and that there were currently two sectoral trade unions representing their interests.

Right to establish organizations without previous authorization. In its previous comments, the Committee had noted that pursuant to section 10(1) of the Law on Public Associations, which the Government had previously indicated was also applicable to employers' organizations, a minimum of ten persons was required to establish an employers' organization, and urged the Government to amend it so as to lower the minimum membership requirement for establishing an employers' organization. The Committee notes from the DCM report that employers' organizations are established as non-commercial entities pursuant to the Law on Non-Commercial Organizations, which allow, under section 20, for an organization to be created by one person, natural or juridical.

The Committee recalls that following the entry into force of the Law on Trade Unions, all existent unions had to be reregistered. The Committee notes from the DCM report that some of the KNPRK affiliates have encountered difficulties with the (re)registration. It further notes with ***concern*** the most recent ITUC and KNPRK communications, referring to cases of denial of registration. The Committee understands that unregistered or not reregistered trade unions are currently under the threat of being liquidated. ***Noting that the DCM was assured that the Ministry of Justice together with the Ministry of Labour and Social Development would look into this matter and assist the unions, as relevant, the Committee trusts that all the authorities will provide the necessary assistance to the organizations concerned. The Committee requests the Government to provide information on all measures taken in this respect and to reply to the ITUC and KNPRK allegations.***

Right to establish and join organizations of their own choosing. The Committee had previously requested the Government to amend the following sections of the Law on Trade Unions:

- sections 11(3), 12(3), 13(3) and 14(4), which require, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector based, territorial and local trade unions to a national trade union association within six months following their registration, so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure; and
- section 13(2), which requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

The Committee notes from the DCM and the Government's reports that following the 2016 Conference discussion, the Ministry of Labour and Social Development established a roadmap and held a tripartite meeting to discuss outstanding comments of the Committee of Experts. On the basis of the discussions, a Concept Note on the amendment of the legislation has been prepared and submitted to the Ministry of Justice. The Committee welcomes that pursuant to point 2 of the Concept Note, the adoption of a draft law "stems from the need to improve the legislation in force with the purpose of better regulating social relationships related to trade union activities and complying with international labour standards enshrined in Convention No. 87". The Committee notes that in agreement with all three trade union centres, the Government intends to amend the Law on Trade Unions so as to: (i) lower the minimum membership requirement from ten to three people in order to establish a trade union; and (ii) simplify the registration procedure. Regarding the obligation imposed on a trade union to be affiliated to a higher level structure and the thresholds (sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions), the Committee notes from the DCM report that while several actors agreed that this constituted a restriction on trade union rights, it was explained that the current circumstances in the country justified it. The Government considers that by obliging trade unions at the lower level to affiliate to trade unions of a higher level, the system allowed all trade unions to access political and economic decision-making processes and at the same time, engaged responsibility of the higher-level trade union structures towards their member organizations. The Government further considers that the trade union movement should be a system where all

parts were linked, especially during the transitional stage, so as to ensure that trade unions become social partners capable of protecting ordinary workers. The Committee notes that the DCM observed that pluralism existed in the country and that there were currently three trade unions at the level of the Republic, 32 sectoral trade unions, 23 territorial trade unions and 339 local trade unions. While taking due note of this information, the Committee once again recalls that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure and that the thresholds requirements to establish higher-level organizations should not be excessively high. ***The Committee, therefore, encourages the Government to engage with the social partners in order to review sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions so as to bring it into full conformity with the Convention. It requests the Government to provide information on all measures taken or envisaged in this regard.***

Law on the National Chamber of Entrepreneurs. The Committee had previously urged the Government to take measures to amend the Law on the National Chamber of Entrepreneurs, so as to eliminate all possible interference by the Government in the functioning of the Chamber and so as to ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee recalls that the Law calls for the mandatory affiliation to the National Chamber of Entrepreneurs (NCE) (section 4(2)), and, during the transitional period to last until July 2018, for the Government's participation therein and its right to veto the NCE's decisions (sections 19(2) and 21(1)). The Committee further notes from the DCM report the difficulties encountered by the Confederation of Employers of Kazakhstan (KRRK) in practice, which stem from the mandatory membership and the NCE monopoly. The DCM noted, in particular, that the KRRK considered that the accreditation of employers' organizations by the NCE and the obligation imposed in practice on employers' organizations to conclude an annual agreement (a model contract) with the NCE, meant, for all intents and purposes, that the latter approved and formulated the programmes of employers' organizations and thus intervened in their internal affairs. While noting with ***regret*** that, according to the information received by the DCM, there are no immediate plans to amend the Law, the Committee welcomes the Government's request for the technical assistance of the Office in this respect. ***In light of the above, and bearing in mind the serious concerns raised during the discussion of the application of this Convention in the Conference Committee, the Committee urges the Government to take measures without delay to amend the Law on the National Chamber of Entrepreneurs with the technical assistance of the Office.***

Article 3. Right of organizations to organize their activities and to formulate their programmes. Labour Code. The Committee had previously requested the Government to indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" for which strikes were illegal under section 303(1) of the Labour Code by providing concrete examples. It further requested the Government to indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Code and to amend section 303(2) so as to ensure that any minimum service is a genuinely and exclusively minimum one and that workers' organizations can participate in its definition.

The Committee notes that section 176(1)(1) of the new Labour Code (previously 303(1)(1)) describes cases where a strike shall be deemed illegal. Under paragraph 1 of this section, strikes shall be deemed illegal when they take place at entities operating hazardous production facilities. The Committee notes sections 70 and 71 of the Law on Civil Protection listing hazardous production facilities, as well as Order No. 353 of the Minister of Investment and Development Order (2014), pursuant to which, determination of whether certain production facilities are hazardous is carried out by the enterprise in question. The Committee notes from the DCM report that the KNPRK pointed out that legal strikes did not take place in Kazakhstan as almost any enterprise could be declared hazardous and the strike therein illegal. Moreover, requests to conduct a strike were submitted to the executive bodies and were denied in practice. In these circumstances, section 176(2) of the Labour Code, according to which, "at railways, civil aviation … public transport … and entities providing communication services, strikes should be allowed to the extent that the required services were provided on the basis of prior agreement with a local executive body", did not allow for strikes in practice. The KNPRK further pointed out that according to section 402 of the Criminal Code, which entered into force on 1 January 2016, an incitement to continue a strike declared illegal by the court was punishable by up to one year of imprisonment and in certain cases (substantial damage to rights and interest of citizens, etc.), up to three years of imprisonment. The Committee notes that the Government considers that the above provisions of the Labour Code could be made more explicit as to which facilities were considered to be hazardous instead of referring to another piece of legislation. The Committee notes, in particular, that according to the abovementioned Concept Note, "the Labour Code does not specify the conditions under which a strike action at entities operating hazardous production facilities shall be deemed illegal, which restricts the right of workers to freedom of action. Taking into account the implications of a strike action at entities operating hazardous production facilities and possible production process failures and accidents as a result, it is proposed to make the provision more concrete by introducing a prohibition to strike in such facilities in cases where industrial safety is not fully guaranteed." The Committee welcomes the intention of the Government to amend the Labour Code regarding the right to strike and recalls that, rather than imposing an outright ban on strikes in certain sectors, negotiated minimum services may be imposed to guarantee the safety of persons and equipment. ***The Committee expects that the necessary legislative amendments will be made in the near future in consultation with the social partners and technical assistance of the Office so as to address the outstanding concerns of the Committee regarding the right to strike. The Committee requests the Government to provide information on all measures taken or envisaged in this respect.***

Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers. The Committee had previously requested the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes from the DCM and the Government's reports that only "direct" financing (for example, payment of salaries of trade union leaders by international organizations, purchase of cars and offices) was prohibited in order to safeguard the constitutional order, independence and territorial integrity of the country. However, there was no prohibition imposed on trade unions to participate in and carry out international projects and activities (seminars, conferences, etc.) together or with the assistance of international workers' organizations. Thus, as noted by the DCM, currently, there was no intention to amend article 5(4) of the Constitution. While noting that all three trade union centres confirmed that in practice, they could benefit from international assistance as long as it was not through a "direct" financing and that there was a general agreement that banning the "direct" financing was necessary, the DCM noted that the legislation could be amended so as to make it clear that joint cooperation projects and activities could be freely carried out. ***The Committee, therefore, requests the Government to adopt, in consultation with the social partners, specific legislative provisions which clearly authorize workers' and employers' organizations to benefit, for normal and lawful purposes, from the financial or other assistance of international workers' and employers' organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.***

Kazakhstan

C100 - Equal Remuneration Convention, 1951 (No. 100)

Observation 2016

Article 1(a) and (b) of the Convention. Equal remuneration for work of equal value. Legislation. The Committee has been referring for many years to the need to amend the Labour Code to give full legislative effect to the principle of equal remuneration for men and women for work of equal value. The Committee notes with ***satisfaction*** that the new Labour Code of 30 November 2015 provides that the employee shall have the right to "equal payment for work of equal value without any discrimination" (section 22(15)), and that section 6 prohibits discrimination based on, among other grounds, sex. ***The Committee requests the Government to provide examples of the practical application of these provisions including any relevant administrative and judicial provisions applying the principle of the Convention.***

Articles 1 and 2. Gender pay gap. The Committee notes the Government's indication in its report that nominal average monthly wages were 144,200 Kazakhstan tenge (KZT) for men and KZT96,500 for women in 2014, showing a significant gender wage gap of 37 per cent. The Government further indicates that the gender pay gap is explained by the high concentration of women in sectors like education, health care and social welfare, where wages are lower than in industry; and that men mostly work in industrial sectors (oil and gas, mining and processing), transport and construction, where working conditions are generally difficult or hazardous, wages are higher than the national average and the use of women's labour is often prohibited because it is difficult and dangerous. In this regard, the Committee notes that section 105(1) of the Labour Code provides that "workers at jobs with hard and/or hazardous working conditions shall be entitled to a higher remuneration as compared to those having normal working conditions …". In this regard, the Committee refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning jobs with hard or hazardous working conditions for which it is prohibited to engage women. The Committee also refers to its comments under Convention No. 111 relating to occupational gender segregation in the labour market and the prevailing stereotypes regarding the roles and responsibilities of women in the family and in society as caregivers. The Committee recalls that occupational gender segregation with women clustered in lower paying jobs or occupations or positions without career opportunities has been identified as one of the underlying causes of the gender pay gap. Historical attitudes towards the role of women in society along with stereotypical assumptions regarding women's aspirations, preferences and "suitability" for certain jobs have contributed to such occupational segregation in the labour market, and an undervaluation of so-called "female jobs" in comparison with jobs performed by men (see 2012 General Survey on the fundamental Conventions, paragraphs 697 and 712). ***The Committee asks the Government to provide detailed information on the measures taken or envisaged in order to reduce the significant gender wage gap. Noting the Government's indication that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee asks the Government to provide information on the measures taken or envisaged to improve the access of women to a wider range of job opportunities including into higher-level and higher-paid occupations, as well as in sectors in which they are currently absent or under-represented, with a view to reducing inequalities in remuneration that exist between men and women in the labour market. The Committee further asks the Government to provide detailed and up-to-date comparable statistics on earnings of women and men, including sex-disaggregated data by industry and occupational category.***

The Committee is raising other matters in a request addressed directly to the Government.

Kazakhstan

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Article 1 of the Convention. Prohibited grounds of discrimination. The Committee previously noted that section 7(2) of the Labour Code of 2007 covered all the prohibited grounds of discrimination set out in *Article 1(1)(a)* of the Convention, except for the ground of colour. Section 7(2) also included a number of additional grounds, as envisaged in *Article 1(1)(b)* of the Convention (including age, physical disability, tribe and membership in a public association). The Committee notes the adoption of the new Labour Code on 30 November 2015, in particular section 6(2), which includes the grounds of origin, social, office and property status, sex, race, nationality, language, religion, convictions, domicile, age, physical disability, or association with civil society organizations. However, it notes that "colour" has not been added as a prohibited ground of discrimination. The Government previously indicated during the discussion in the Conference Committee on the Application of Standards (May–June 2014) that race was generally understood to be inseparable from skin colour, but that further consultations would be held with representatives of the central state authorities and with the social partners with a view to resolving the issue of colour as a ground of discrimination. The Committee recalls that, when legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention. ***The Committee requests the Government to indicate the reasons for the omission of the ground of colour in the legislation and to take the opportunity of any future revision of the Code to include this ground explicitly in the list of the prohibited grounds of discrimination in section 6(2) of the Labour Code of 2015. The Committee also requests the Government to provide detailed information on the measures taken to ensure, in practice, effective protection against discrimination based on the grounds enumerated in the Convention, including colour.***

Articles 1 and 2. Exclusion of women from certain occupations. In its previous observations, and following up on the discussion in the Conference Committee on the Application of Standards (May–June 2014), the Committee commented on the potential discriminatory nature of sections 186(1) and (2) of the Labour Code of 2007, regarding jobs for which it was prohibited to engage women and the maximum weights for women to lift and move manually. The Committee notes that section 26(2)(4) of the new Labour Code of 2015 continues to prohibit the employment of women at jobs with hard or hazardous working conditions as per "List of jobs where women cannot be employed", and that pursuant to section 16(26) of the new Code, the Authorized Agency for Regulation of Labour Relations shall approve the list of occupations prohibited for employment of women, and weight transport limits for women. The Committee recalls that Resolution No. 1220 of 28 October 2011 specified the weight limits for manual lifting and moving by women and contained an updated list of 299 occupations prohibited for women, some of which included operation of weightlifting machines and bulldozer machines. The Government had indicated in this regard, that the prohibitions did not restrict employment but served to protect motherhood and women's health, in particular taking into account that the level of automation in manufacturing in the country was lower than in the rest of Europe. The Committee notes that in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the persistence of some forms of harmful practices and traditions and patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, in particular those portraying women as caregivers (CEDAW/C/KAZ/CO/3-4, 10 March 2014, paragraph 16). The Committee recalls that women should have the right to pursue freely any job or profession and the Committee points out that exclusions or preferences in respect of a particular job in the context of *Article 1(2)* of the Convention, should be determined objectively without reliance on stereotypes and negative prejudices about men's and women's roles (General Survey on the fundamental Conventions, 2012, paragraph 788). ***While noting the Government's desire to protect the health and safety of women, the Committee urges the Government to take the necessary steps to guarantee equal opportunities and equal protection of health and safety for both men and women, and to review the current list of occupations prohibited to women with a view to ensuring that protective measures on women's employment are limited to maternity protection in the strict sense, and are not based on stereotypes regarding women's professional abilities and role in society and the family. The Committee also requests the Government to include information on the measures taken to consult workers' and employers' organizations in this regard and the results of such consultations.***

Equality of opportunity and treatment between men and women in employment and occupation. The Committee previously noted that in the first quarter of 2014 women represented 48.6 per cent of the employed population, and 56.2 per cent of the unemployed. Women's participation was 54.6 per cent in the civil service, 31 per cent in industrial production, 26 per cent in construction, 47 per cent in agriculture, forestry and fishing, 60 per cent in finance and insurance, 50 per cent in the professional, scientific and technical sectors, and 74 per cent in education, showing considerable occupational gender segregation of the labour market. The Committee notes that the Government's report does not contain any of the requested information on the measures taken to implement the national law and policy with a view to promoting and ensuring, in practice, equality between men and women in employment and occupation. ***The Committee urges the Government to provide detailed information, including statistical data, disaggregated by sex, on the specific measures taken, particularly in the framework of the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women, the Strategy for Gender Equality 2006–16 and the "Roadmap for employment to 2020" to promote and ensure, in practice, equality of opportunity and treatment for men and women in employment and occupation in a wide range of jobs, including high-level jobs and those with career prospects. The Committee also requests the Government to include information on the distribution of women and men in the various vocational training courses and in education.***

Equality of opportunity and treatment of national, ethnic, and religious minorities. In its previous observation, the Committee requested the Government to indicate the specific measures taken to promote equality of opportunity in employment and occupation of minorities and improve the representation of non-ethnic Kazakhs in the public service. Noting with ***regret*** that the Government's report once again does not contain a reply on this matter, the Committee recalls that the national equality policy required under *Article 2* of the Convention should cover all segments of the population, including national, ethnic and religious minorities. ***The Committee urges the Government to provide information on the measures taken to this end, including information on the occupational requirements of the public service, in particular the language requirements. The Committee further requests the Government to take the necessary steps to collect and analyse data on the distribution of men and women belonging to minorities in the public and private sectors disaggregated by branch of activity and occupation, as well as their participation levels in vocational training and education.***

The Committee is raising other matters in a request addressed directly to the Government.

Kazakhstan

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Articles 3(a), 5 and 6 of the Convention. Sale and trafficking, monitoring mechanisms and programmes of action. In its previous comments, the Committee noted the various measures taken by the Government to combat trafficking of children, including the establishment of the Interdepartmental Commission against human trafficking, as well as the steps taken to train police officers, officials from the migration service, and the procurator's office, on methods for the detection, investigation, prevention and suppression of trafficking in persons.

The Committee notes the Government's information in its report that the newly adopted Criminal Code of 2014, increased penalties for crimes against children, including trafficking of children. It also notes from the website of the International Organization for Migration (information from IOM) that in August 2015, the Ministry of Internal Affairs of the Republic of Kazakhstan, in coordination with the IOM for Central Asia conducted the information campaign "Let's stop trafficking together" across the country. The information from IOM further indicates that Kazakhstan has made sufficient progress in combating trafficking in persons through active work of the Interdepartmental Commission against human trafficking; the adoption of a National Action Plan to combat human trafficking 2015–17; the development of standards on providing social services for victims of trafficking; and the adoption of guidelines, developed in cooperation with IOM, for police officers and labour inspectors on identification and referral of victims of trafficking. The Committee further notes the information from IOM that according to the Ministry of Internal Affairs, 300 cases related to trafficking in persons have been recorded and investigated in 2014, of which 23 cases relate to trafficking of minors. The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations of 30 October 2015, expressed concern about the reports that large number of children are trafficked from, to and within the country and that most victims remain unidentified. The CRC also expressed concern at the information about the persistent complicity of the police in trafficking cases (CRC/C/KAZ/CO/4, paragraph 58). ***While noting the various measures taken by the Government to combat trafficking of children, the Committee requests the Government to intensify its efforts to strengthen the capacity of law enforcement agencies in identifying and combating the sale and trafficking of children under 18 years of age. It also requests the Government to take the necessary measures to ensure that all perpetrators of trafficking of children, including complicit government officials, are subject to thorough investigations and robust prosecutions, and that sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard. Lastly, it requests the Government to provide information on the specific measures taken within the framework of the National Action Plan of 2015–17 to combat trafficking in children and the results achieved.***

Article 3(d) and application of the Convention in practice. Hazardous work on tobacco and cotton plantations. The Committee previously noted that studies on child labour in Kazakhstan revealed that children were mostly engaged in the informal and agricultural sectors, particularly in tobacco and cotton harvesting. It also noted the Government's information on the various child labour monitoring bodies in the country and on the seminars and conferences on monitoring child labour organized in the several districts.

The Committee observes that the Government report does not contain any data related to the situation of working children in tobacco and cotton plantations, as previously requested by the Committee. The Committee notes the Government's information that the reviewed list of types of hazardous work prohibited to children under the age of 18 years which was approved by Order No. 391 of May 2015, prohibits the hiring of minors on tobacco and cotton plantations. It also notes the Government's statement that Kazakh tobacco cultivation has been excluded from the United States Department of Labour's List of Agricultural Crops Grown using child labour.

Moreover, the August 2014 Report of the United Nations Human Rights Council's Special Rapporteur on contemporary forms of slavery indicates that in 2013, child labour monitoring systems (CLMS) had been piloted in five villages and that direct services had been provided for children at risk of, or involved in, the worst forms of child labour. However, the Committee notes that the UN Special Rapporteur, expressed her concern that despite the commitment and support of the tobacco industry and steps taken to increase protection of migrant workers, cases of hazardous child labour persist on some farms (A/HRC/27/53/Add.2, paragraphs 14 and 30). The report also indicates that a company acknowledged that cases of child labour were still reported on tobacco plantations, even though their number had decreased (paragraph 22). The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of October 2015, expressed concern about the incidence of child labour in cotton harvesting, which involves lifting or carrying of heavy weights, poor living conditions and health risks related to fertilizers and pesticides (CRC/C/KAZ/CO/4, paragraph 56). ***While taking due note of the measures taken by the Government, the Committee requests the Government to continue to take measures to protect children from hazardous work in agriculture, particularly in tobacco and cotton plantations, including through strengthening the capacity of the various child labour monitoring bodies in order to enable them to monitor the effective implementation of the national provisions giving effect to the Convention. The Committee also requests the Government to provide information on the impact of the child labour monitoring systems, in terms of the number of children identified and withdrawn from hazardous work in agriculture as well as on the direct services provided to children at risk. Lastly, it requests the Government to provide information on the number of inspections carried out by the various child labour monitoring bodies, the number of violations detected and penalties applied, related to hazardous work performed by children under 18 years, including in cotton and tobacco harvesting.***

The Committee is raising other matters in a request addressed directly to the Government.

Kyrgyzstan

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted that according to the 2007 national child labour survey (CLS) estimates, 672,000 of the 1,467,000 children aged 5–17 years in Kyrgyzstan (45.8 per cent) were economically active. The prevalence of employment among children increases with age: from 32.7 per cent of children aged 5–11 years; to 55 per cent of children aged 12–14 years; and 62.3 per cent of children aged 15–17 years.

The Committee notes that, in the framework of the ILO–IPEC project entitled "Combating Child Labour in Central Asia – Commitment becomes Action" (PROACT CAR Phase III), which aims to contribute to the prevention and elimination of the worst forms of child labour in Kazakhstan, Kyrgyzstan and Tajikistan, a wide array of actions have been undertaken to combat child labour, including its worst forms, in Kyrgyzstan. These include the adoption of the Code on Children of 31 May 2012, section 14 of which bans the use of child labour; a mapping, in 2012, of the legislation and policies on child labour and youth employment in Kyrgyzstan, which aims to identify the link between the elimination of child labour and the promotion of youth employment; the finalization of the Guidelines on Child Labour Monitoring in Kyrgyzstan; as well as a number of action programmes to establish child labour free zones and to establish child labour monitoring systems in various regions of the country. ***The Committee strongly encourages the Government to pursue its efforts towards the progressive elimination of child labour through the ILO–IPEC PROACT CAR Phase III project and to provide information on the results achieved, particularly with respect to reducing the number of children working under the minimum age (16 years) and in hazardous work.***

Article 2(1). Scope of application and labour inspection. The Committee previously noted the Government's information that the Attorney-General of the Republic of Kyrgyzstan and the state labour inspectorate are responsible for the application and enforcement of labour legislation. It noted that the minimum age provisions applied to work carried out at home or in a business, domestic work, hired work, commercial agriculture, and family and subsistence agriculture. However, it noted the statement in a 2006 report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) that many children were working in family enterprises, domestic services, agriculture (tobacco, cotton, rice), cattle breeding, gasoline sales, car washing, shoe cleaning, selling products at the roadsides, and retail sales of tobacco and alcohol. The Committee also noted the Government's information that child labour was widespread in farms, private enterprises, individual business activities and self-employment.

The Committee notes the Government's information that the Labour Code, by virtue of its section 18, applies to the parties involved in contractual labour relations, that is the worker and the employer. It notes, however, that according to the CLS, the overwhelming majority of child labourers (96 per cent) work in agriculture or home production, and in terms of work status, the overwhelming majority (95 per cent) are unpaid family workers. ***The Committee requests the Government to take immediate measures to ensure that self-employed children, children in the informal economy and children working on family farms benefit from the protection laid down in the Convention. In this regard, it once again requests the Government to indicate any measures adopted or envisaged to strengthen the labour inspection, particularly in the abovementioned sectors. Lastly, the Committee once again requests the Government to provide information on the manner in which the state labour inspectorate and the Attorney-General enforce specific legislative provisions giving effect to the Convention.***

Article 7. Light work. The Committee previously noted that, according to section 18 of the Labour Code, pupils who have reached the age of 14 years may conclude an employment contract with the written consent of their parents, guardians or trustees to perform light work outside school hours, provided that it does not harm their health and does not interfere with their education. The Committee noted that according to sections 91 and 95 of the Labour Code, the working hours for workers aged 14–16 years shall not exceed 24 hours per week, and daily working hours shall not exceed five hours. The Committee therefore requested the Government to indicate the manner in which the attendance at school of children working five hours per day was ensured. It also requested the Government to indicate the activities in which light work by children aged 14–16 years may be permitted.

The Committee notes the information in the 2007 CLS according to which, despite the high employment ratio among children, school attendance is also very high, with 98.9 per cent of children aged 7–14 years and 89.2 per cent of children aged 15–17 years attending school. However, children in employment are also found to have slightly lower school-attendance rates than non-working children. Among non-working children aged 7–17 years, the school attendance rate is estimated to be 97.4 per cent, compared to 94.5 per cent among working children aged 7–17 years, with the difference mainly resulting from the lower school attendance of older working children. ***The Committee requests the Government to take immediate measures to ensure that children under 14 years of age are not engaged in work or employment. With regard to children over 14 years of age engaged in light work, the Committee requests the Government to take the necessary measures to ensure that their school attendance is not prejudiced. The Committee also once again requests the Government to indicate the activities in which light work by children aged 14–16 years may be permitted. If these activities are not yet determined by the law, the Committee urges the Government to take the necessary measures to adopt a list of types of light work activities which are permitted to children over 14 years of age.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee previously noted that section 124(1) of the Criminal Code prohibits the trafficking of persons, and section 124(2) specifies that trafficking in persons under 18 is an aggravated offence. However, the Committee noted the Government's indication to the Committee on the Rights of the Child (CRC) that the victims of trafficking in Kyrgyzstan include women and children who were exploited in the sex industry in Turkey, China and the United Arab Emirates (May 2006, CRC/C/OPSC/KGZ/1, page 10). The Committee further noted that the CRC, in its concluding observations, expressed regret at the lack of statistical data, and the lack of research on the prevalence of national and cross-border trafficking and the sale of children (2 February 2007, CRC/C/OPSC/KGZ/CO/1, paragraph 9).

The Committee notes the information from ILO–IPEC that the Ministry of Foreign Affairs is developing a National Action Plan Against Human Trafficking for 2012–15. The Committee also notes the information from the report of the UN Special Rapporteur on violence against women, its causes and consequences, of 28 May 2010, that trafficking of women and children for sexual exploitation and forced labour continues to be a problem in the country (A/HRC/14/22/Add.2, paragraph 33).

The Committee must once again express its ***concern*** at the lack of data on the prevalence of child trafficking in Kyrgyzstan, as well as reports of the prevalence of this phenomenon in the country. ***The Committee, therefore, requests the Government to pursue its efforts to adopt the National Action Plan Against Human Trafficking, and to provide information on the measures taken within this framework to combat the trafficking of persons under the age of 18, once adopted. The Committee also requests the Government to take the necessary measures to ensure that sufficient data on the sale and trafficking of persons under the age of 18 is made available. In this regard, the Committee once again requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of section 124 of the Criminal Code. To the extent possible, all information provided should be disaggregated by sex and age.***

Clause (b). Use, procuring or offering of children for prostitution. In its previous comments, the Committee noted that section 157(1) of the Criminal Code makes it an offence for a person to involve a minor in prostitution, while sections 260 and 261 of the Criminal Code make enticement into prostitution an offence. The Committee also noted the Government's indication that the number of street children and children in risk groups forced into prostitution was rising. Moreover, the Committee noted that the CRC, in its concluding observations, expressed concern that in a number of cases of child prostitution, investigations and prosecutions had not been initiated, and that child victims may be held responsible, tried and placed in detention (CRC/C/OPSC/KGZ/CO/1, paragraphs 17 and 21). The Committee expressed concern that child prostitution continues in part due to the lack of legal oversight, and that children who are the victims of commercial sexual exploitation risk being regarded as criminals.

The Committee notes the Government's statement that prostitution is one of the forms of child labour targeted by the Programme of Action by the Social Partners for the Elimination of the Worst Forms of Child Labour. However, the Committee also notes the information in the Report of the UN Special Rapporteur on violence against women, its causes and consequences, of 28 May 2010, that adolescent girls in the country are particularly vulnerable to commercial sexual exploitation in urban areas, with the majority of the girls involved coming from rural areas (A/HRC/14/22/Add.2, paragraph 35). ***Noting the absence of information on the application in practice of the provisions of the Criminal Code relating to child prostitution, the Committee once again requests the Government to provide this information, in particular statistics on the number and nature of infringements reported, investigations, prosecutions, convictions and sanctions applied. It also requests the Government to take the necessary measures to ensure that children who are used, procured or offered for commercial sexual exploitation are treated as victims rather than offenders. Lastly, the Committee once again requests the Government to indicate whether the national legislation contains provisions specifically criminalizing the client who uses children under 18 years of age for the purpose of prostitution.***

Clause (d). Hazardous work. Children working in agriculture. The Committee previously noted that section 294 of the Labour Code prohibits the employment of persons under the age of 18 years in work with harmful and dangerous conditions (including in the manufacture of tobacco) and that a detailed list of occupations prohibited for persons under 18 years had been approved. Nonetheless, the Committee noted that the use of hazardous child labour in the agricultural sector was widespread, particularly in tobacco, rice and cotton fields, and that in rural areas, regulations prohibiting children from engaging in such work were not strictly enforced. In this regard, the Committee noted the statement in a 2006 report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) entitled "Internationally recognized core labour standards in Kyrgyzstan" that some schools require children to participate in the tobacco harvest, and that the income from this goes directly to the schools, not the children or their families. This report also indicated that, in some cases, classes are cancelled and children are sent to the fields to pick cotton. The Committee further noted the information from ILO–IPEC that many of the children working in tobacco, rice and cotton fields in Osh and Jalalabat regions faced work-related risks including injuries resulting from the use of heavy equipment, lack of clean drinking water in the fields, exposure to toxic pesticides, insects and rodent bites, and hazards related to tobacco production (skin irritation and intoxication).

The Committee notes the Government's statement that work in the fields is one of the forms of child labour targeted by the Programme of Action by the Social Partners for the Elimination of the Worst Forms of Child Labour. The Committee also notes the Government's statement that 19.7 per cent of child labourers in the country are engaged in the agricultural sector. Furthermore, the Committee notes the continued implementation of a project aimed at eradicating child labour in the tobacco industry, developed by a non-governmental organization and carried out by trade union workers in the agro-industrial sector. The Government states that the goal of the project is to devise and introduce a mechanism for eliminating child labour in two pilot districts in the southern region of the country. Through the project, 1,123 families were given microcredit in 2011 and 131 mutual assistance groups were set up. The Government states that this project has enabled the removal of 3,142 children in the two districts from work in the tobacco industry. In addition, the Committee notes the information from ILO–IPEC of July 2012 that, through the project entitled "Combating Child Labour in Central Asia – Commitment becomes Action (PROACT CAR Phase III)", action has been taken to address hazardous child labour in agriculture. For example, through an action programme to support the establishment of a child labour free zone in Chuy region, implemented by the Trade Unions of Education and Science Workers of Kyrgyzstan (TUESWK) during the period June 2011 to August 2012, 140 children (75 boys and 65 girls) were withdrawn from, or prevented from entering, hazardous child labour in agriculture and the urban informal sector. In addition, 15 children (six boys and nine girls) were withdrawn from hazardous child labour in agriculture in the first six months of 2012 through a school-based package of services, including non-formal education, reintegration into formal education, school supplies, monthly food baskets, extra-curricular activities, awareness raising, recreational activities and family counselling. ***Taking due note of the measures taken by the Government, the Committee urges the Government to pursue its efforts to ensure that persons under 18 years of age are protected against hazardous agricultural work, particularly in the cotton, tobacco and rice-growing sectors, and to provide information on the results achieved through the abovementioned initiatives. It also requests the Government to take the necessary measures to ensure the effective enforcement of regulations prohibiting children's involvement in hazardous agricultural work, and to provide information on the steps taken in this regard, in its next report.***

Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking in children. The Committee previously noted a disparity between the number of trafficking victims identified and the number of victims receiving assistance, and it requested the Government to strengthen its efforts in this regard.

The Committee notes the information from the International Organization for Migration that it is implementing a project entitled "Combating Trafficking in Persons in Central Asia: Prevention, Protection and Capacity Building" in the country from 2009–12, which includes awareness raising and assistance for victims. The Committee also notes the implementation in Kyrgyzstan of the Joint Programme to Combat Human Trafficking in Central Asia of the ILO, the United

Nations Development Programme and the United Nations Office on Drugs and Crime under the UN Global Initiative to Fight Human Trafficking, which includes support for the development of national referral mechanisms established between law enforcement agencies and civil society organizations. ***The Committee requests the Government to provide information on the measures taken, including through these projects, to provide the necessary and appropriate direct assistance for the removal of child victims of trafficking, and for their rehabilitation and social integration. It also requests the Government to supply information on the results achieved, including the number of victims of trafficking under the age of 18 who have benefited from repatriation and rehabilitative assistance.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Malta

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 6 and 10 of the Convention. Numbers and conditions of employment of labour inspectors. In reply to the Committees' previous comments, the Government indicates that steps have been taken by the Department of Industrial Relations to recruit more inspectors and possibly improve working conditions in the inspection services. The Committee recalls that, according to *Article 10* of the Convention, the numbers of labour inspectors must be sufficient to secure the effective discharge of the duties of the inspectorate with due regard for the number of work places liable to inspection, the number of workers employed in them, the number and complexity of the legal provisions to be enforced and the practical conditions under which visits of inspection must be carried out in order to be effective. Furthermore, according to *Article 6,* the inspection staff must be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. Referring to its General Survey of 2006 on labour inspection, in particular the paragraphs dealing with the conditions of service of labour inspectors (paragraphs 201–224), the Committee again draws the Government's attention to paragraph 209 in particular, in which it emphasizes that labour inspectors' salaries should reflect the importance and specificities of their duties and take account of personal merit, and to paragraph 216 in which it expresses the view that career prospects that take into account seniority and personal merit are essential to attract and especially to retain qualified and motivated staff in labour inspectorates. ***The Committee again asks the Government to take measures without delay to ensure that all vacant inspectorate posts are filled as soon as possible and that the conditions of service of the profession as a whole are reviewed with a view to their upgrading so as to attract and retain sufficient numbers and motivated staff, and expresses the hope that in its next report the Government will be in a position to recount real progress made in these matters.***

Articles 9 and 21. Associating technical experts and specialists in the work of inspection, and content of the annual report. The Committee notes the information sent by the Government on the cooperation of the Occupational Health and Safety Authority with other bodies in supervising application of the labour legislation on occupational safety and health. It also notes the statistical information on the number of occupational accidents, the number of workplaces visited and the number of activities conducted by the Occupational Health and Safety Authority and the data provided by the inspectorate section on the number of inspections, the number of workers covered and the number and list of shortcomings detected. ***The Committee requests the Government to provide information on cooperation between the Occupational Health and Safety Authority and the inspectorate section, providing copies of any relevant texts or reports. With reference to its previous comments on the content of the annual labour inspection reports, it again asks the Government to refer to its general observations of 1996, 2007, 2009 and 2010, and to take measures enabling the central inspection authority to publish and communicate to the ILO an annual report containing all the information required by Article 21 of the Convention.*** In this connection, the Committee draws the Government's attention to Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81).

Labour inspection and child labour. In its previous comments, the Committee noted that the number of reported cases of violations of the minimum age legislation had dropped from 52 cases in 2005–06 to 24 in 2008–09. The data supplied in the last report show an increase, the number of cases having risen from 24 in 2008–09 to 42 in 2010–11. ***The Committee requests the Government to provide information on the measures taken or envisaged to improve the labour inspectorate's effectiveness in this area. Further to its previous comments, the Committee again asks the Government to provide detailed information on the labour inspection activities carried out in collaboration with the Directorate for Educational Services, and their results.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016 which are of a general nature.

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes. In its previous comments, the Committee noted that under section 74(1) and (3) of the Employment and Industrial Relations Act 2002 (EIRA), where disputes have been referred to conciliation to promote an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister and the Minister shall refer the dispute to the Tribunal for settlement.

The Committee recalls that compulsory arbitration to end a collective labour dispute is only accepted if it is at the request of both parties involved in a dispute, or in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***In this respect, the Committee requests once again the Government to take the necessary measures to amend section 74(1) and (3) of the EIRA to ensure the respect of these principles. The Committee requests the Government to indicate any developments in this regard and to indicate in its next report any measures taken to bring its legislation into conformity with the Convention.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals by public officers, portworkers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). The Committee had noted from the Government's report that public officers have the right to appeal to the Public Service Commission, an independent body (the members are appointed by the President of Malta acting on the advice of the Prime Minister given after a consultation with the Leader of the Opposition and they cannot be removed except for inability or misbehaviour causes) established under section 109 of the Constitution of Malta. The Committee also notes from the Government's report that the Public Service Commission's primary role is to ensure that disciplinary action taken against public officers is fair, prompt and effective. ***The Committee requests the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also once again requests the Government to indicate the procedures applicable for the examination of allegations of anti union dismissals of portworkers and public transport workers.***

Articles 2 and 3. Protection against acts of interference. The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts given that the EIRA does not expressly protect employers' and workers' organizations from acts of interference by one another, in each other's affairs. ***The Committee once again requests the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts.***

Article 4. Collective bargaining. The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement (see 342nd Report of the Committee on Freedom of Association, Case No. 2447, paragraph 752). ***The Committee once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

C119 - Guarding of Machinery Convention, 1963 (No. 119)

Observation 2016

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 6 of the Convention. Prohibition by national laws and regulations of the use of machinery without appropriate guards. ***Noting that the Government's report contains no reply to its previous comments, the Committee requests the Government, once again, to indicate the measures that have been taken or are envisaged in order to prohibit, in accordance with the Convention, the use of machinery any dangerous part of which, including the point of operation, is without appropriate guards.***

Article 7. Employer's duty to ensure compliance. The Committee notes the information concerning the effect given in practice to the Occupational Health and Safety Authority and Act 2000 (Act No. XXVII of 2000), and in particular the statement that there are few offences reported and sanctions imposed for contraventions of the employers' obligations relating to the use of dangerous machinery. It notes the Government's statement that one of the problems is that machinery is often second-hand. ***The Committee requests the Government to indicate measures taken or envisaged to ensure employers' obligations under Article 7 for second-hand machinery.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Observation 2016

The Committee notes with ***regret*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 26 and 27 of the Convention. Annual report on labour inspection in agriculture. The Committee notes with concern that there was an obvious decline in inspection visits in 2010, their number having dropped by 80 per cent compared with 2008. The Committee also notes that the Government has provided no information on the annual labour inspection activities report for the last few years. The Committee recalls its general observation of 2010, in which it emphasized the essential importance it attaches to the publication and communication to the ILO within the prescribed time limits of an annual labour inspection report. When it is well prepared and contains all the requisite information, the annual report offers an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection services and, subsequently, the determination of the means necessary to improve their effectiveness. The Committee recalls in this connection that extremely valuable guidance on the presentation and analysis of such information is to be found in the Labour Inspection Recommendation, 1947 (No. 81). ***The Committee requests the Government to ensure, in accordance with Article 26, that an annual report on the work of the inspection services in agriculture containing the information required by Article 27(a)–(g), is published by the central inspection authority, either as a separate report or as part of its general annual report, and that a copy is sent immediately to the International Labour Office.***

Labour inspection and child labour. ***Since its report contains no information on the Committee's previous comments on this matter, the Government is again asked to provide information on the activities by the labour inspectorate concerning child labour in agricultural undertakings, and on its results.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Moldova, Republic of

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

Articles 2 and 3(b) of the Convention. Legislative developments. The Committee notes with ***satisfaction*** the enactment of Law No. 71 of 14 April 2016 on Amendments and Addenda to Some Legislative Acts, which promotes the mainstreaming of gender equality by amending several other Acts. These amendments include, among others, the establishment of specialized units in the Ministry of Labour, Social Protection and Family as well as in central and local public administration authorities to mainstream and implement gender equality in policies and programmes at both national and local levels (section 19 of Law No. 5-XVI of 2006 on Ensuring Gender Equality, and section 14(2) of Law No. 436-XVI of 2006 on Local Public Administration); the specific prohibition of the publication of job advertisements that discriminate on the basis of gender, including by public and private employment agencies (section 9(2) of Law. No. 5 XVI of 2006); the promotion of gender equality in education and vocational training institutions, including the promotion of balanced participation of women and men in occupying teaching and scientific positions in the education and science systems (section 13 of Law No. 5-XVI of 2006); the introduction of paternity leave into the Labour Code of 2003 (section 1241) as well as the Law on the Status of the Intelligence and Security Officer (section 50 of Law No. 170-XVI of 2007); and the introduction of a minimum representation quota of 40 per cent for both men and women in Parliament (section 27(2)(4) of Law No. 64-XII of 1990 on Government) as well as in the list of candidates for parliamentary and local elections (section 41(21) of Electoral Code No. 1381-XIII of 1997). ***The Committee asks the Government to provide information on the measures taken to implement the new legislative provisions concerning gender equality, and their impact in practice.***

The Committee is raising other matters in a request addressed directly to the Government.

Moldova, Republic of

C152 - Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Legislation. The Committee notes the information provided in the Government's report on the effect given to the Convention. It takes due note of the Occupational Health and Safety Act (RM No. 186-XVI of 10 July 2008) (hereinafter, the OSH Act) as well as the Safety Rules for Work On-Board Inland Navigation Vessels, on the Operation of the Vessel's Lifeboats and Lifesaving Equipment (hereinafter, the Safety Rules for Work On-Board Inland Navigation Vessels) referenced by the Government. However, it notes that the Government has not provided the specific legislation and regulatory provisions giving effect to the Convention. ***The Committee asks the Government to indicate, in its next report, the relevant provisions giving effect to each Article of the Convention and to communicate the text of these provisions, as well as a copy of the Safety Rules for Work On-Board Inland Navigation Vessels, if possible in one of the working languages of the Office.***

The Committee also notes that the Giurgiulesti International Free Port (GIFP), capable of receiving both inland and seagoing vessels, boasts an easy access to the Black Sea and is increasingly important in the region. ***Consequently, the Committee asks the Government to transmit the GIFP Port Rules, and any standards or rules applicable to employers and workers, once they are adopted.***

Article 1 of the Convention. Dock work. The Committee recalls that this Article of the Convention provides that the organizations of employers and workers concerned shall be consulted on, or otherwise participate in, the establishment and revision of the definition of dock work. ***The Committee asks the Government to provide information on the employers' and workers' organizations concerned and the manner in which they were consulted in establishing the definition of "dock work".***

Article 5(1). Responsibility for compliance with the measures referred to in Article 4(1). The Committee notes that according to the Government, section 10(1) of the OSH Act provides that the employer shall take the necessary measures to protect the health and safety of workers, including preventing occupational risks, providing information and training and ensuring the necessary organization and provision of resources. ***The Committee asks the Government to provide further information on the national laws or regulations which make appropriate persons responsible for compliance with all of the measures referred to in Article 4 of the Convention.***

Article 6(1). Measures to ensure the safety of portworkers. The Committee notes the Government's indication that periodic briefings are held with the employees of companies on safety techniques and training in safe working methods and approaches, and instructions have been developed in safety techniques. ***The Committee asks the Government to provide further information on the measures taken or envisaged to give effect to this Article of the Convention.***

Article 7(2). Provisions for close collaboration between employers and workers. The Committee notes the Government's indication that a trade union committee has been set up to ensure closer cooperation between workers and employers and to resolve any disputes that may arise. ***The Committee asks the Government to provide further details on the trade union committee and its work to ensure the application of the measures referred to in Article 4(1) of the Convention.***

Article 14. Installation, construction, operation and maintenance of electrical equipment. The Committee notes the Government's indication that the State Power Supply Inspectorate (Gosenergonadzor) approved rules on user operation of electrical installations and safety regulations on the operation of electrical installations. ***The Committee asks the Government to provide further details on the specific rules and safety regulations, regarding the operation of electrical installations, that give effect to this Article of the Convention.***

Article 15. Adequate and safe means of access to the ship during loading or unloading. The Committee notes that the information provided by the Government repeats the terms of the Article, without providing specific information on the manner in which safe means of access to the ship shall be provided and kept available, in accordance with this Article. ***The Committee requests the Government to describe the safe means of access required when a ship is being loaded or unloaded alongside a quay or another ship.***

Article 16. Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land. The Committee notes the Government's reference to paragraph 2 of rule 2.4 of the Safety Rules for Work On-Board Inland Navigation Vessels, which provides that operational boats shall be provided on all vessels more than 25 metres in length, except for high-speed and other passenger vessels operating within cities and crewless non-self-propelled vessels. However, the Committee notes that this provision does not ensure the full application of this Article of the Convention. ***The Committee requests the Government to provide further details on the measures prescribed for the safe embarking and disembarking, and safe transport of workers, in accordance with Article 16.***

Article 17. Access to the hold or deck of a vessel. The Committee notes that the information provided by the Government repeats the terms of this Article, without providing specific information on the application of this Article. ***The Committee asks the Government to provide details on the means of access to a ship's hold or cargo deck, in accordance with paragraph 1(b) of this Article.***

Article 34(1). Provision and use of personal protective equipment. The Committee notes that the information provided in the Government's report repeats the terms of this Article, without providing specific information on the effect given to this Article. ***The Committee asks the Government to describe the circumstances in which the issue and use of personal protective equipment and protective clothing is required.***

Article 36(1). Medical examinations. The Committee notes the Government's indication that consultations are held with employers at annual general meetings and that the Ungheni River Port, in consultation with the industry trade union representing the interests of workers, is about to conclude a three-year collective agreement. ***The Committee asks the Government to indicate the manner in which employers' and workers' organizations of all the ports in the Republic of Moldova were consulted regarding medical examinations.***

Article 38(1). Provision of adequate training and instruction. The Committee notes the Government's indication that instructions given to workers shall be formulated for all occupations and tasks performed at the company, on the basis of their specific characteristics and the specific nature of the tasks and workstations. ***The Committee asks the Government to indicate how instruction and training is provided to workers employed in dock work.***

In addition, in the absence of any information on their application, the Committee requests the Government to provide details on the measures taken or envisaged, in law and in practice, to give full effect to the following provisions of the Convention:

- ***Article 6(2).***
- ***Article 7(1).***
- ***Article 8.***
- ***Article 9.***
- ***Article 10.***
- ***Article 11.***
- ***Article 12.***
- ***Article 13(1)–(3) and (5)–(6).***
- ***Article 19.***
- ***Article 20.***
- ***Article 21.***
- ***Article 22(3) and (4).***
- ***Article 24.***
- ***Article 25.***

- ***Article 26.***
- ***Article 31.***
- ***Article 32.***
- ***Article 34(2) and (3).***
- ***Article 35.***
- ***Article 36(2) and (3).***
- ***Article 37.***
- ***Article 38(2).***
- ***Article 39.***
- ***Article 40.***
- ***Article 41.***

Application of the Convention in practice. The Committee notes that the Government's report does not contain any information regarding the application in practice of the provisions giving effect to the Convention. ***The Committee accordingly requests the Government to give a general appreciation of the manner in which the Convention is applied in the country and provide information on the number of dock workers employed, the number and nature of contraventions reported, the resulting action taken and the number of occupational accidents and diseases reported, and attach relevant extracts from the reports of the concerned inspection services.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Norway

C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)

Observation 2016

Integrated management of Norway's obligations under different social security instruments. The Committee notes the reports on the application of Conventions Nos 102, 118, 128 and 130, which together formed the annual report of Norway to the Council of Europe on the application of the European Code of Social Security (ECSS) and its Protocol. The supervision of these regional instruments is entrusted to the Committee in accordance with the arrangement made between the Council of Europe and the International Labour Organization under *Article 74(4)* of the ECSS. The resulting alignment of the reporting obligations under the ECSS and ILO Conventions Nos 102, 121, 128, 130 and 168 pursued the objective of reducing the administrative workload for governments and avoiding duplication of reports. For this purpose, the report form on the ECSS expressly stipulates that, if a government is bound by similar obligations as a result of having ratified Convention No. 102, "it may communicate to the Council of Europe copies of the reports it submits to the International Labour Office on the implementation of this Convention". Where certain Parts of Convention No. 102 (for Norway – Parts III, V, IX and X) have ceased to be applicable due to ratification of the corresponding Parts of the more advanced Conventions Nos 128 and 130, governments may equally communicate to the Council of Europe copies of their reports on these Conventions. Conversely, the information provided by the Government in its reports on the ECSS and the relevant provisions of the European Social Charter is regularly taken into account by the Committee in assessing the application of ILO social security Conventions. To facilitate the integrated management of Norway's obligations under different social security instruments, the Committee refers the Government to the coordination tables, reporting timelines and relevant comments of the supervisory bodies compiled in the *ILO Technical Note on the state of application of the provisions for social security of the international treaties on social rights ratified by Norway,* published in the country profile on the NORMLEX database.

Consolidated reporting on social security Conventions. Besides the reports, the Government has supplied its reply to the questions raised in the Committee's previous conclusions on the ECSS and the publication of the Ministry of Labour and Social Affairs on *The Norwegian Social Insurance Scheme, January 2015.* In order to analyse this information within a unified legal framework for a comprehensive social security system, the Committee has consolidated it in a single report covering all branches of social security included in Convention No. 102 and the ECSS. Where appropriate, it was completed with the information extracted from the MISSOC database and Norway's previous reports on the ECSS and ILO social security Conventions supplied during the period 2006–16. The Committee has not taken into account the reports prior to 2006 as the information contained in them is likely to be outdated. The resulting *Consolidated Report* (CR) thus contains all the relevant information provided by Norway over the last decade on the application of these instruments and permits to greatly improve the quality of reporting in terms of the completeness of the information available, coherence across different schemes and benefits providing protection, and the efficacy of the regulatory framework governing the national social security system.

With regard to the completeness of the available information describing the Norwegian social security system, the analysis of the CR reveals certain persistent information gaps which do not permit to assess compliance with the indicated provisions of the Conventions, as is the case for example with Article 69 of Convention No. 102 and corresponding provisions of other Conventions defining situations which may lead to the suspension of benefits. Not only these provisions are highlighted in the CR, but relevant questions of the report forms on the ECSS and ILO Conventions are included as a reminder to complete the CR with the requested information. ***The Committee draws the Government's attention to the fact that, since 2006, its reports do not contain any information on the following provisions:***

Convention No. 102 – Part II (Medical care), Articles 8, 10(1)(3) and (4), 11 and 12; Part VI (Employment injury benefit), Articles 32, 34, 35, 37 and 38; Part VII (Family benefit), Articles 43 and 44; Part XIII (Common provisions), Articles 69 (for Parts II, III, V, VI, VII, IX and X), 70 (for Parts II and VII), 71 and 72 (for Part II);

Convention No. 128 – Articles 13, 25, 31, 32 and 33;

Convention No. 130 – Articles 7, 9, 13, 15, 16, 28, 29, 30, 31 and 32;

Convention No. 168 – Articles 7, 18, 24, 25, 26 and 30.

With respect to the clarity of the information provided, particularly as regards rules and elements taken into account for the calculation of the level of benefits, in many instances it requires technical clarifications from the national experts and concrete references to the corresponding provisions of the national regulations. In order to facilitate the experts' dialogue on these highly technical issues which depend upon the context in which they are used, the statements in question are highlighted and appropriate marks and questions are entered by the Committee directly in the text of the CR. In view of the significant volume (120 pages) and the complexity of the CR covering all branches of the national social security system, it is also equipped with user friendly navigation signs and summary tables. The information included by the Government in its reports but which is not directly relevant to the legal obligations under the respective Conventions, is reproduced in the annexes to the CR. ***The Committee attaches the Consolidated Report to the present conclusions and asks the Government to complete it following the indications inside with the missing information, technical clarifications, provisions of the national legislation and statistics.***

The Committee raises the most important issues in the request addressed directly to the Government.

Norway

C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)

Observation 2016

Integrated management of Norway's obligations under different social security instruments. The Committee notes the reports on the application of Conventions Nos 102, 118, 128 and 130, which together formed the annual report of Norway to the Council of Europe on the application of the European Code of Social Security (ECSS) and its Protocol. The supervision of these regional instruments is entrusted to the Committee in accordance with the arrangement made between the Council of Europe and the International Labour Organization under *Article 74(4)* of the ECSS. The resulting alignment of the reporting obligations under the ECSS and ILO Conventions Nos 102, 121, 128, 130 and 168 pursued the objective of reducing the administrative workload for governments and avoiding duplication of reports. For this purpose, the report form on the ECSS expressly stipulates that, if a government is bound by similar obligations as a result of having ratified Convention No. 102, "it may communicate to the Council of Europe copies of the reports it submits to the International Labour Office on the implementation of this Convention". Where certain Parts of Convention No. 102 (for Norway – Parts III, V, IX and X) have ceased to be applicable due to ratification of the corresponding Parts of the more advanced Conventions Nos 128 and 130, governments may equally communicate to the Council of Europe copies of their reports on these Conventions. Conversely, the information provided by the Government in its reports on the ECSS and the relevant provisions of the European Social Charter is regularly taken into account by the Committee in assessing the application of ILO social security Conventions. To facilitate the integrated management of Norway's obligations under different social security instruments, the Committee refers the Government to the coordination tables, reporting timelines and relevant comments of the supervisory bodies compiled in the *ILO Technical Note on the state of application of the provisions for social security of the international treaties on social rights ratified by Norway,* published in the country profile on the NORMLEX database.

Consolidated reporting on social security Conventions. Besides the reports, the Government has supplied its reply to the questions raised in the Committee's previous conclusions on the ECSS and the publication of the Ministry of Labour and Social Affairs on *The Norwegian Social Insurance Scheme, January 2015.* In order to analyse this information within a unified legal framework for a comprehensive social security system, the Committee has consolidated it in a single report covering all branches of social security included in Convention No. 102 and the ECSS. Where appropriate, it was completed with the information extracted from the MISSOC database and Norway's previous reports on the ECSS and ILO social security Conventions supplied during the period 2006–16. The Committee has not taken into account the reports prior to 2006 as the information contained in them is likely to be outdated. The resulting *Consolidated Report* (CR) thus contains all the relevant information provided by Norway over the last decade on the application of these instruments and permits to greatly improve the quality of reporting in terms of the completeness of the information available, coherence across different schemes and benefits providing protection, and the efficacy of the regulatory framework governing the national social security system.

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Convention No. 128 – Articles 13, 25, 31, 32 and 33;

Convention No. 130 – Articles 7, 9, 13, 15, 16, 28, 29, 30, 31 and 32;

Convention No. 168 – Articles 7, 18, 24, 25, 26 and 30.

With respect to the clarity of the information provided, particularly as regards rules and elements taken into account for the calculation of the level of benefits, in many instances it requires technical clarifications from the national experts and concrete references to the corresponding provisions of the national regulations. In order to facilitate the experts' dialogue on these highly technical issues which depend upon the context in which they are used, the statements in question are highlighted and appropriate marks and questions are entered by the Committee directly in the text of the CR. In view of the significant volume (120 pages) and the complexity of the CR covering all branches of the national social security system, it is also equipped with user friendly navigation signs and summary tables. The information included by the Government in its reports but which is not directly relevant to the legal obligations under the respective Conventions, is reproduced in the annexes to the CR. ***The Committee attaches the Consolidated Report to the present conclusions and asks the Government to complete it following the indications inside with the missing information, technical clarifications, provisions of the national legislation and statistics.***

The Committee raises the most important issues in the request addressed directly to the Government.

Norway

C130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130)

Observation 2016

Integrated management of Norway's obligations under different social security instruments. The Committee notes the reports on the application of Conventions Nos 102, 118, 128 and 130, which together formed the annual report of Norway to the Council of Europe on the application of the European Code of Social Security (ECSS) and its Protocol. The supervision of these regional instruments is entrusted to the Committee in accordance with the arrangement made between the Council of Europe and the International Labour Organization under *Article 74(4)* of the ECSS. The resulting alignment of the reporting obligations under the ECSS and ILO Conventions Nos 102, 121, 128, 130 and 168 pursued the objective of reducing the administrative workload for governments and avoiding duplication of reports. For this purpose, the report form on the ECSS expressly stipulates that, if a government is bound by similar obligations as a result of having ratified Convention No. 102, "it may communicate to the Council of Europe copies of the reports it submits to the International Labour Office on the implementation of this Convention". Where certain Parts of Convention No. 102 (for Norway – Parts III, V, IX and X) have ceased to be applicable due to ratification of the corresponding Parts of the more advanced Conventions Nos 128 and 130, governments may equally communicate to the Council of Europe copies of their reports on these Conventions. Conversely, the information provided by the Government in its reports on the ECSS and the relevant provisions of the European Social Charter is regularly taken into account by the Committee in assessing the application of ILO social security Conventions. To facilitate the integrated management of Norway's obligations under different social security instruments, the Committee refers the Government to the coordination tables, reporting timelines and relevant comments of the supervisory bodies compiled in the *ILO Technical Note on the state of application of the provisions for social security of the international treaties on social rights ratified by Norway,* published in the country profile on the NORMLEX database.

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Convention No. 168 – Articles 7, 18, 24, 25, 26 and 30.

With respect to the clarity of the information provided, particularly as regards rules and elements taken into account for the calculation of the level of benefits, in many instances it requires technical clarifications from the national experts and concrete references to the corresponding provisions of the national regulations. In order to facilitate the experts' dialogue on these highly technical issues which depend upon the context in which they are used, the statements in question are highlighted and appropriate marks and questions are entered by the Committee directly in the text of the CR. In view of the significant volume (120 pages) and the complexity of the CR covering all branches of the national social security system, it is also equipped with user friendly navigation signs and summary tables. The information included by the Government in its reports but which is not directly relevant to the legal obligations under the respective Conventions, is reproduced in the annexes to the CR. ***The Committee attaches the Consolidated Report to the present conclusions and asks the Government to complete it following the indications inside with the missing information, technical clarifications, provisions of the national legislation and statistics.***

The Committee raises the most important issues in the request addressed directly to the Government.

Norway

C168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

Observation 2016

Integrated management of Norway's obligations under different social security instruments. The Committee notes the reports on the application of Conventions Nos 102, 118, 128 and 130, which together formed the annual report of Norway to the Council of Europe on the application of the European Code of Social Security (ECSS) and its Protocol. The supervision of these regional instruments is entrusted to the Committee in accordance with the arrangement made between the Council of Europe and the International Labour Organization under *Article 74(4)* of the ECSS. The resulting alignment of the reporting obligations under the ECSS and ILO Conventions Nos 102, 121, 128, 130 and 168 pursued the objective of reducing the administrative workload for governments and avoiding duplication of reports. For this purpose, the report form on the ECSS expressly stipulates that, if a government is bound by similar obligations as a result of having ratified Convention No. 102, "it may communicate to the Council of Europe copies of the reports it submits to the International Labour Office on the implementation of this Convention". Where certain Parts of Convention No. 102 (for Norway – Parts III, V, IX and X) have ceased to be applicable due to ratification of the corresponding Parts of the more advanced Conventions Nos 128 and 130, governments may equally communicate to the Council of Europe copies of their reports on these Conventions. Conversely, the information provided by the Government in its reports on the ECSS and the relevant provisions of the European Social Charter is regularly taken into account by the Committee in assessing the application of ILO social security Conventions. To facilitate the integrated management of Norway's obligations under different social security instruments, the Committee refers the Government to the coordination tables, reporting timelines and relevant comments of the supervisory bodies compiled in the *ILO Technical Note on the state of application of the provisions for social security of the international treaties on social rights ratified by Norway,* published in the country profile on the NORMLEX database.

Consolidated reporting on social security Conventions. Besides the reports, the Government has supplied its reply to the questions raised in the Committee's previous conclusions on the ECSS and the publication of the Ministry of Labour and Social Affairs on *The Norwegian Social Insurance Scheme, January 2015.* In order to analyse this information within a unified legal framework for a comprehensive social security system, the Committee has consolidated it in a single report covering all branches of social security included in Convention No. 102 and the ECSS. Where appropriate, it was completed with the information extracted from the MISSOC database and Norway's previous reports on the ECSS and ILO social security Conventions supplied during the period 2006–16. The Committee has not taken into account the reports prior to 2006 as the information contained in them is likely to be outdated. The resulting *Consolidated Report* (CR) thus contains all the relevant information provided by Norway over the last decade on the application of these instruments and permits to greatly improve the quality of reporting in terms of the completeness of the information available, coherence across different schemes and benefits providing protection, and the efficacy of the regulatory framework governing the national social security system.

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Convention No. 128 – Articles 13, 25, 31, 32 and 33;

Convention No. 130 – Articles 7, 9, 13, 15, 16, 28, 29, 30, 31 and 32;

Convention No. 168 – Articles 7, 18, 24, 25, 26 and 30.

With respect to the clarity of the information provided, particularly as regards rules and elements taken into account for the calculation of the level of benefits, in many instances it requires technical clarifications from the national experts and concrete references to the corresponding provisions of the national regulations. In order to facilitate the experts' dialogue on these highly technical issues which depend upon the context in which they are used, the statements in question are highlighted and appropriate marks and questions are entered by the Committee directly in the text of the CR. In view of the significant volume (120 pages) and the complexity of the CR covering all branches of the national social security system, it is also equipped with user friendly navigation signs and summary tables. The information included by the Government in its reports but which is not directly relevant to the legal obligations under the respective Conventions, is reproduced in the annexes to the CR. ***The Committee attaches the Consolidated Report to the present conclusions and asks the Government to complete it following the indications inside with the missing information, technical clarifications, provisions of the national legislation and statistics.***

The Committee raises the most important issues in the request addressed directly to the Government.

Poland

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

The Committee notes the observations of the Independent and Self-Governing Trade Union ("Solidarnosc") received on 29 August 2016 as well as the Government's reports.

Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour. The Committee notes the observations of Solidarnosc, stating that Poland is a country of destination of people who become victims of forced labour, the majority of whom are migrants. Solidarnosc also states that there has been exploitation of citizens of the Democratic People's Republic of Korea (DPRK) for forced labour in Poland. The Committee notes Solidarnosc's indication that there were 239 DPRK workers brought legally to Poland in 2011 and 509 workers brought legally in 2012. According to Solidarnosc's indication, DPRK workers have to send back to the regime a large part of their legitimate earnings. The Committee notes Solidarnosc's concern regarding the working conditions of those workers, which might be assimilated to forced labour. Solidarnosc mentions that ten years ago, DPRK workers were discovered in a fruit plantation near Sandomierz on the coastal construction sites. Their salary was only $20 instead of the $850 promised in the contract, their passports were taken away, they were working on average 72 hours per week and they were placed in barracks, from which they were prohibited to leave.

The Committee notes the Government's statement, in its communication dated 7 October 2016, that in 2016 comprehensive controls of the legality of employment of foreigners in selected entities known to employ DPRK citizens were carried out throughout the country. During those controls, no cases of illegal employment were detected but a number of infringements of the provisions of the Act on Employment Promotion and provisions of the Labour Law were found. In the controlled entities there were no instances of failure to pay or payment of a lower amount than that stated in the foreigners' work permits. Findings of this respect were made on the basis of evidence of payments presented by the employers (bank transfers and payrolls with signatures of DPRK citizens). The information supplied by the regional labour inspectorates shows the labour inspectors have found no proof that a given employer or entrepreneur would employ a national of the DPRK in conditions giving rise to a suspicion of forced labour.

The Committee also takes notes of the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK of 8 September 2015 (A/70/362). In this report, the Committee notes the Special Rapporteur's indication that nationals of the DPRK are being sent abroad by their Government to work under conditions that reportedly amount to forced labour (paragraph 24). According to the report, 50,000 DPRK workers operate in countries such as Poland and mainly in the mining, logging, textile and construction industries. The Committee notes, as examples of working conditions, that: the workers do not know the details of their employment contract; workers earn on average between $120 and $150 per month, while employers in fact pay significantly higher amounts to the Government of the DPRK (employers deposit the salaries of the workers in accounts controlled by companies from the DPRK); the workers are forced to work sometimes up to 20 hours per day with only one or two rest days per month; health and safety measures are often inadequate; safety accidents are allegedly not reported to local authorities but handled by security agents; they are given insufficient daily food rations; their freedom of movement is unduly restricted; they are under constant surveillance by security personnel and are forbidden to return to the DPRK during their assignment (paragraph 27); workers' passports are confiscated by the same security agents; workers are threatened with repatriation if they do not perform well enough or commit infractions; and host authorities never monitor the working conditions of overseas workers. The Committee notes the Special Rapporteur's indication that companies hiring overseas workers from the DPRK become complicit in an unacceptable system of forced labour and that they should report any abuses to the local authorities, which have the obligation to investigate thoroughly and end such partnership (paragraph 32).

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices such as retention of passports, deprivation of liberty, non-payment of wages, and physical abuse, as such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to the exaction of forced labour and to provide information on the measures taken in this regard. The Committee also requests the Government to take concrete action to identify the victims of forced labour among migrant workers and to ensure that these victims are not treated as offenders. Lastly, the Committee requests the Government to take immediate and effective measures to ensure that the perpetrators are prosecuted and that sufficiently effective and dissuasive sanctions are imposed.***

The Committee is raising other matters in a request directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

C137 - Dock Work Convention, 1973 (No. 137)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

At its 324th Session (June 2015), the Governing Body entrusted the Committee of Experts with following up on the issues raised in the report of the tripartite committee which examined the representation submitted by the Union of Stevedores, Cargo Handlers and Maritime Checking Clerks in Central and Southern Portugal, the Union XXI – Trade Union Association of Administrative Staff, Technicians and Operators at the Container Cargo Terminals in the Port of Sines, the Union of Dockworkers in the Port of Aveiro, and the Union of Stevedores, Cargo Handlers and Checking Clerks at the Port of Caniçal alleging non-observance by Portugal of the Convention (GB.324/INS/7/8). After examining the circumstances in which the 2013 reform of dock work was carried out, the tripartite committee encouraged the Government to continue opting for social dialogue in the event of future reforms in the port sector. ***Following up on the conclusions and recommendations of the tripartite committee, the Committee of Experts requests the Government to provide information on the application of Act No. 3/2013 on dock work and the other measures that have been adopted in a tripartite context with a view to continuing the improvement of working conditions and efficiency in ports (paragraph 57 of the report). The Committee also requests the Government to provide information on the measures adopted by the competent authorities and employers' organizations which signed the agreement of 12 September 2012 for the application of the new legal framework governing the dock sector and that it will supply up-to-date comparative statistical data on the number of dockworkers in the country disaggregated by age and sex, including the number of temporary or casual dockworkers (paragraph 83). Please also indicate the measures adopted to bring the collective agreements in force in the various ports in the country into compliance with the new legal framework governing dock work set out in Act No. 3/2013 (paragraph 84).***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C142 - Human Resources Development Convention, 1975 (No. 142)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Vocational guidance and training policies and programmes closely linked with employment. Collaboration of the social partners. The Government indicates that, in the framework of the follow-up to the protocol agreement on the Economic Adjustment Programme signed in May 2011 between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, it is planned to continue taking measures to combat low school enrolment rates and early school drop-outs, and to improve the quality of secondary and vocational education, with a view to increasing the effectiveness of the education sector, improving the quality of human capital and facilitating its matching with labour market needs. The Government reports that measures were agreed to in the context of the Tripartite Agreement for Growth, Competitiveness and Employment of 22 March 2011, particularly to develop opportunities for dual certification intended to reduce early drop-outs and school failure and to reinforce the support provided for guidance as a means of improving skills levels. The Tripartite Commitment to Growth, Competitiveness and Employment was concluded in January 2012. On the subject of the Tripartite Agreement for Growth, Competitiveness and Employment, the UGT indicates that, although the social partners agreed on its relevance, delays in the implementation of measures intended to improve the system of the certification of vocational skills have been noted, particularly with regard to recognition, validity and certification. Moreover, the UGT argues that the Government's decision to suspend the operation of "new opportunities centres" that are not financially self-sufficient has had the effect of ending several activities without offering real alternatives for those affected, which would appear to be a matter of greater concern in light of the fact that the new network of 120 "vocational qualification and education centres" will only be fully operational at the beginning of 2015. The UGT considers that Government responses for the training of the unemployed have been inadequate, particularly in view of the lack of adequate articulation with the reinforcement of employability. Finally, the UGT observes that levels of participation and involvement of the social partners are inadequate in the formulation and promotion of measures and instruments potentially covered by the Convention. ***The Committee refers to the comments made in the context of the application of the Employment Policy Convention, 1964 (No. 122), and the tripartite discussion held in June 2013 in the Conference Committee, and invites the Government to provide detailed information in its report on Convention No. 142 on the manner in which the cooperation of employers' and workers' organizations is secured in the formulation and implementation of vocational guidance and training policies and programmes (Article 5 of the Convention). It invites the Government to provide information in its report on the impact of the measures taken to coordinate education, training and employment policies and on the results of the measures adopted to promote links between education, training and employment.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Portugal

C158 - Termination of Employment Convention, 1982 (No. 158)

Observation 2016

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Legislative developments. Application of the Convention in practice. In reply to previous comments regarding the evaluation of the impact of the reduction of termination benefits by the legislative reforms of 2011 in terms of maintaining and creating employment, the Government explains that the 2011 labour reform established a transitional regime; hence, the impact of the legislative amendments on reducing the amount of termination benefits is not immediate. The Government adds that, according to the data available, there seems to be a slight decrease in terminations of employment contracts since the beginning of 2012. Moreover, the most recent employment statistics show that the employment rate has increased over the past four quarters (2013–14), which indicates an upward trend in employment after four consecutive quarters of decline (2012–13). Furthermore, the Government enumerates in its report the most significant amendments to legal regimes regarding termination of employment contracts, resulting from an adjustment process initiated in 2011. In its observations, the CIP reiterates some of the points previously made concerning the fact that Portuguese legislation regulates certain aspects of employment contracts' termination more strictly and in greater detail than the Convention. The IOE and the CIP referred to important legal reforms adopted following the Tripartite Agreement for Competitiveness and Employment of March 2011 and the Commitment to Growth, Competitiveness and Employment of January 2012. The CGTP–IN expresses its concern in view of the increased undermining of workers' protection from dismissal and refers to some of the latest legislative developments which have resulted in a new reduction of the compensation for termination of the employment contract, namely Act No. 23/2012 of 25 June 2012 and Act No. 69/2013 of 30 August 2013. Both the CGTP–IN and the UGT criticize the amendments resulting in new dismissal criteria, particularly in the case of extinction of the work position. The Government refers to the judicial decision whereby a number of sections of the Labour Code were declared unconstitutional, by reason of infringing the prohibition to dismiss without fair cause established in article 53 of the Constitution. In its decision No. 62/2013, the Constitutional Court found that the modifications introduced into section 368(2) of the Labour Code by Act No. 23/2012 of 25 June 2012 failed to provide the necessary normative guidance as to the criteria that should govern the employer's decision. That section allowed the employer the right to define the criterion to be applied for making a post redundant in a context when there were other posts with identical functional content – hence eliminating the application of the seniority criterion. As regards the modified version of section 375(1)(d) of the Labour Code which eliminated the obligation to transfer the employee to another suitable position in case of extinction of the work position and dismissal for unsuitability, the Constitutional Court found that dismissal on the grounds of a worker's unsuitability could only occur if no alternative was available. ***The Committee requests the Government to continue to provide information evaluating the impact of legislative reforms, in terms of maintaining and creating employment.***

Article 2(3) of the Convention. Adequate safeguards in case of recourse to contracts of employment for a specified period. The Government indicates that in order to ensure the exceptional nature of the fixed-term contract regime, the cases in which such contract should be considered as and converted into a permanent contract are determined by law, namely when concluded with the intent to evade the regulations which are applicable to permanent contracts or where the maximum duration of the contract or the maximum number of renewals has been exceeded (section 147 of the Labour Code). The Government also provided statistical information showing that the percentage of workers with fixed-term contracts in 2013 has suffered a slight increase in comparison with 2012 (0.9 percentage point). The Committee takes note of the judicial decisions transmitted by the Government in connection with the protection of workers who hold fixed-term employment contracts. ***The Committee requests the Government to continue to provide information on the manner in which the protection provided by the Convention is ensured to workers who have concluded an employment contract for a specified period of time and the number of workers affected by these measures.***

Article 2(5). Micro-enterprises. The Government indicates that the procedure for dismissal in micro-enterprises is regulated by the same provisions applicable to other enterprises, except for the intervention of work councils in the procedure of dismissal; hence the amendments to section 366(1) of the Labour Code concerning the investigation to be conducted by the employer, in reply to a disciplinary notice for the purposes of evidence gathering, are now applicable to micro-enterprises. ***The Committee requests the Government to continue to provide information on the effective application of the Convention to micro-enterprises.***

Article 4. Justification for termination. The CGTP–IN recalls that the legislative amendments resulting in the elimination of the obligation of the employer to follow a specific criterion (seniority based) to select employees to be retrenched and to transfer the employee to another suitable position, in case of a redundant position and dismissal for unsuitability, were declared unconstitutional by the Constitutional Court (Decision No. 602/2013). Following the decision, the original criterion was altered by Act No. 27/2014 of May 2014. Both the UGT and the CGTP–IN deplore the fact that the criterion established by Act No. 27/2014 placing performance, qualifications, and labour costs above the seniority criterion may be used at the employer's discretion. ***The Committee requests the Government to provide examples of the application of the legislative amendments of 2014 regarding the valid reason for termination of employment, including copies of the leading judicial decisions in this regard.***

Article 8. Right to appeal. Time limit for the appeal procedure. In reply to previous comments, the Committee notes the detailed statistical information appended to the Government's report concerning the number, outcome and average length of proceedings for 2011 and 2012, both at first instance and on appeal. The Committee recalls the concerns of the CGTP–IN regarding the reduction of the time limit for bringing a judicial claim for unfair dismissal from one year to 60 days, as established by the revised Labour Code. ***The Committee again requests the Government to provide information on the practical application of the new legislative provisions regulating claims for unfair dismissal. It also requests the Government to provide information on the roles of mediation and arbitration in resolving issues related to the Convention.***

Article 10. Compensation. In reply to the concern raised by the CGTP–IN with regard to the relaxed procedural requirements and the effects of unlawful dismissal introduced by the 2009 Labour Code, the Government refers to the modifications introduced by Act No. 23/2012 of June 2012 regarding the investigation to be conducted by the employer following a disciplinary notice, the effects of unlawful dismissal, and compensation in lieu of reinstatement. ***The Committee requests the Government to continue to provide information concerning Article 10 of the Convention, including examples of court rulings giving effect to this provision.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. *Strengthening the legal framework.* The Committee previously noted that section 127.1 of the Penal Code prohibits trafficking in persons. It also noted the Government's indication in its 2008 report that a draft text of the law on combating trafficking in persons had been finalized and submitted to the State Duma of the Russian Federation. The Committee noted that there was no special instrument to govern matters relating to combating human trafficking and defending the rights of victims. The Committee expressed the firm hope that the Government would pursue its efforts to strengthen the legal framework to combat trafficking in persons, including through the adoption of the draft law on combating trafficking in persons.

The Committee notes the Government's indication in its report that in 2003, criminal liability was introduced for the purchase and sale of human beings and other transactions with respect to a person, as well as recruiting, carriage, transfer, concealment or receiving (section 127.1 of the Penal Code) and for the deed of the use of slave labour (section 127.2 of the Penal Code). The Committee also notes the Government's indication that the Code of Administrative Offences establishes administrative liability for a number of offences relating to the exploitation of persons under sections 6.11, 6.12, 18.10, 18.13 and 18.4 which deal with prostitution, illegal transportation of individuals, illegal activities and illegal employment of foreign workers.

The Committee observes, however, an absence of information on measures taken to strengthen the legal framework to combat trafficking in persons. Moreover, it notes that in its concluding observations on the eight periodic report of the Russian Federation of 20 November 2015, the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) expresses its concern regarding the absence of a coordinating body and the lack of coordination among the relevant state structures to combat trafficking in persons (CEDAW/C/RUS/CO/8, paragraph 25). ***The Committee reminds the Government of the need to adopt appropriate legislation in order to effectively counteract trafficking in persons. It therefore once again requests the Government to take the necessary measures to strengthen the legal framework to combat trafficking in persons, including through the adoption of the draft law on combating trafficking in persons. It also requests the Government to ensure better coordination among the relevant State structures with a view to combating trafficking in persons effectively.***

2. *Law enforcement.* In its previous comments, the Committee noted the communication from the International Trade Union Confederation (ITUC), according to which thousands of persons were trafficked from the Russian Federation to other countries, and internal trafficking within the Russian Federation also took place. Women were generally forced to work as prostitutes while men were trafficked into agricultural or construction work. The Committee urged the Government to strengthen its efforts to identify, prevent, suppress and combat trafficking in persons and to continue to provide information on the measures taken. The Committee requested the Government to pursue its international cooperation efforts to this end and to take measures to further strengthen the capacity of law enforcement officials. Finally, it requested the Government to continue to provide information on the application in practice of section 127.1 of the Penal Code, particularly the number of investigations, prosecutions and convictions.

The Committee notes the Government's indication that the official operations of the law enforcement agencies against human trafficking reveals that, in recent years, the number of recordable crimes under sections 127.1 (trafficking in human beings) and 127.2 (use of slave labour) of the Penal Code has remained relatively stable. According to the Government, the proportion of crimes committed under sections 127.1 and 127.2 of the Penal Code is less than one thousandth of 1 per cent of the total number of crimes recorded on the territory of the Russian Federation. The Committee notes that the data of the Prosecutor General provided in the Government's report shows that in 2015 there were 37 recorded crimes under section 127.1, 26 cases were referred to the courts by the prosecutors and 54 offenders were discovered. The Committee takes note from the Government's report of the strengthening and expansion of cooperation between the Commonwealth of Independent States (CIS) member States for action against human trafficking. The Committee also notes the Government's information that, besides the implementation of the Programme of Cooperation for 2014–18 among CIS member States, the internal affairs agencies of the Russian Federation are constantly undertaking a series of operational and search initiatives and special operations for the prevention and detection of crimes in the sphere of human trafficking. Thus, the measures taken from June 2014 to September 2014 led to the discovery of 128 human trafficking channels including 51 connected with sexual exploitation.

Furthermore, the Committee notes in the concluding observations of 20 November 2015 that the CEDAW is concerned by the lack of information on the number of complaints, investigations, prosecutions and convictions relating to trafficking in women (CEDAW/C/RUS/CO/8, paragraph 25). ***While taking note of the measures taken by the Government, the Committee urges the Government to strengthen the capacities of law enforcement bodies, to ensure that they are provided with appropriate training to improve identification of victims of trafficking, paying special attention to the situation of women victims of trafficking for sexual exploitation, and to conduct investigations throughout the territory. It also requests the Government to strengthen its international cooperation efforts to combat trafficking in persons and to provide information on specific measures taken in this regard. Lastly, the Committee requests the Government to continue to provide information on the number of investigations, prosecutions, convictions and on the specific penalties applied to persons convicted under sections 127.1 and 127.2 of the Penal Code.***

3. *Protection and reintegration of victims.* The Committee previously requested the Government to pursue and strengthen its efforts to identify victims of trafficking and to provide them with appropriate protection and assistance. It requested the Government to continue to provide information concerning measures taken in this regard, including the number of persons benefiting from available services.

The Committee notes that the Government indicates that there are two aspects of the system of protection of victims. First, there is the protection of all persons who have suffered from human trafficking, which is based on universal standards of human rights and freedoms. The second protection, according to the Government, concerns purely the persons who have been victims of human trafficking and who cooperate with law enforcement agencies in the detection and investigation of the crime. The Committee notes that Federal Act No 119-FZ of 20 August 2004 of the State of Protection of Victims, Witnesses and Other Participants of Criminal Proceedings was adopted in the Russian Federation and that a State Programme for ensuring the safety of victims, witnesses and other participants of criminal proceedings was approved. The Committee notes the Government's indication that the present body of law enables a set of measures to be taken to protect this category of persons who have become victims of human trafficking.

The Committee also notes that the CEDAW has expressed its concern at the lack of information on support and rehabilitation programmes for victims of trafficking. ***The Committee once again requests the Government to strengthen its effort to provide victims of trafficking with appropriate protection and assistance such as shelters, crisis centres and reintegration programmes. It also requests the Government to provide statistical data on the number of victims identified and provided with appropriate protection and assistance.***

The Committee is raising other matters in a request addressed directly to the Government.

Russian Federation

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the response of the Government on the 2012 observations made by the International Trade Union Confederation (ITUC). The Committee also notes the observations made by the Confederation of Labour of Russia (KTR) received on 1 September 2015 alleging legislative restrictions imposed on the right to strike, addressed by the Committee below, and the Government's comments thereon. The KTR also alleges that the existing mechanisms to protect trade union rights are ineffective. ***The Committee requests the Government to provide its comments in this respect.*** The Committee further notes the 2013 and 2015 observations made by the International Organisation of Employers (IOE), which are of a general nature.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. The Committee recalls that it had previously requested the Government to ensure that workers of municipal services as well as civil servants who did not exercise authority in the name of the State could exercise the right to strike. In this regard, the Committee notes that the 1998 Federal Municipal Service Act was repealed by Law No. 25-FZ of 2 March 2007 on Municipal Service in the Russian Federation, which contains, in its section 14 1. 14), the prohibition imposed on employees to stop their duties as a means of resolving a labour dispute. The Committee further recalls that a similar prohibition is contained in section 17 (1) 15) of the Law on State Civil Service (2004). The Committee notes the Government's explanation that the prohibition of strikes for civil servants is compensated by the existence of impartial individual service dispute bodies to address unresolved differences between the employer and civil servants. The Committee notes the KTR's indication that section 9 of the Law on State Civil Service divides the duties of the civil service into four categories, that far from all civil servants covered by the Law are "officials exercising authority in the name of the State", and that the Law imposes the prohibition on strikes irrespective of the specific category of the public service. The Committee once again recalls that the right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State. ***The Committee therefore requests the Government to take the necessary measures to amend section 14 1. 14) of the Law on Municipal Service and section 17 1. 15) of the Law on State Civil Service so as to bring the legislation into conformity with the Convention and to indicate all measures taken in this respect.***

With regard to its previous request to amend the legislation so as to ensure the right to strike of railway workers, the Committee notes that the Government refers to section 413(b) of the Labour Code, according to which, strikes are unlawful in a number of services, including air, water and rail transport, as well as communications, only if a strike action would endanger the defence of the country, the security of the State or people's lives and health. The Committee notes, however, that pursuant to the same section, the right to strike can be restricted by a federal law and in this respect, further notes that pursuant to section 26(2) of the Law on Federal Rail Transport (2003), strikes are forbidden in the railway transport. The Committee recalls that railway transport does not constitute an essential service in the strict sense of the term where strikes can be prohibited and that instead, a negotiated minimum service could be established in this public service of fundamental importance. ***The Committee, therefore, requests the Government to take the necessary measures to amend section 26(2) of the Law on Federal Rail Transport (2003) so as to bring it into line with the Convention, as well as with section 413(b) of the Labour Code. It requests the Government to provide information on the measures taken or envisaged in this respect.***

Russian Federation

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee recalls that it had previously requested the Government to provide its comments on the 2012 observations made by the International Trade Union Confederation (ITUC) which concerned violations of the Convention in practice and referred, in particular, to cases of anti-union discrimination, interference by employers in trade union internal affairs and refusal to bargain collectively. ***Regretting that no information has been provided by the Government thereon and noting similar allegations submitted by the ITUC in 2014 and 2015, the Committee urges the Government to provide its comments on all outstanding comments relating to the application of the Convention.***

Articles 1, 2 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and interference. The Committee notes the observations of the Confederation of Labour of the Russian Federation (KTR) received on 1 September 2015 referring to the matters raised by the Committee below. The Committee notes with ***concern*** the KTR allegations of ineffective protection against acts of anti-union discrimination in practice outlined in its 2015 communication. According to the KTR this is due to: the lack of training of law enforcement and judicial staff; inadequate legal definition of discrimination under section 3 of the Labour Code; lack of any extrajudicial mechanisms that could effectively resolve labour disputes involving allegations of discrimination; lack of understanding by the courts of facts that need to be proven and burden of proof to establish discrimination, and the absence of clear indication in the law of the legal consequences or sanctions in cases of discrimination. The KTR refers to several examples of impunity in cases of anti-union discrimination suffered by workers. The Committee notes that, according to the information provided by the Government, during the first half of 2015, 194,256 complaints have been lodged with the State Labour Inspectorate, 28 of which included matters relating to anti-union discrimination. The Government refers to section 136 of the Criminal Code, which punishes acts of discrimination by a fine of between 100,000 and 300,000 Russian rubles (RUB), or a fine based on the salary or any other income of the convicted person for a period of one to two years, or by deprivation of the right to occupy certain positions or to engage in a certain activity for a period of up to five years, or by community service for a period of up to 480 hours, or by unpaid labour for a period of up to two years, or by forced labour for up to five years or deprivation of liberty for the same period. ***The Committee requests the Government to provide information on the number of people found guilty of anti-union discrimination and convicted under section 136 of the Criminal Code, as well as the penalties imposed.***

The Committee had previously noted a proposal prepared by the KTR and the Federation of Independent Trade Unions of Russia (FNPR), following an ILO technical mission in the framework of the Committee on Freedom of Association (CFA) Case No. 2758 in 2011. The proposal aimed at improving protection against violations of trade union rights, in general, and anti-union discrimination and interference, in particular. It called for the training of relevant bodies and courts on freedom of association and suggested the creation of a body with a specific mandate to examine cases of violations of trade union rights. The Committee had requested the Government to provide information on the measures taken to implement this proposal so as ensure the application of the Convention in practice.

The Committee takes note of the Government's indication that a working group composed of representatives of the social partners was established in November 2013 to analyse the CFA recommendations in Cases Nos 2758, 2216 and 2251 with a view to improving the current regulatory and legislative framework. It further notes that the discussion of the implementation of the CFA recommendations in these cases by the Russian Tripartite Commission was scheduled to take place in October 2015. The Committee recalls that it had previously noted the conclusions and recommendations of the CFA in these cases, which concerned, among others, allegations of anti-union discrimination and the absence of effective mechanisms to ensure protection against such acts, denial of facilities for workers' representatives, violation of the right to bargain collectively and the failure of the State to investigate those violations. The Committee ***deeply regrets*** the lack of progress in the implementation of concrete proposals for addressing the issues raised above made by the two trade union centres in the country and supported by the Government and the employers' organization during the visit of the ILO mission in 2011. ***The Committee expects that the Government will take the necessary measures without further delay to implement the KTR–FNPR proposals to which it had previously agreed. It requests the Government to provide information on the developments in this regard. The Committee further reminds the Government that it can avail itself of the technical assistance of the Office in this respect.***

Article 4. Parties to collective bargaining. The Committee recalls that, pursuant to section 31 of the Labour Code, when an enterprise trade union represents less than half of the workers in that enterprise, other non-unionized representatives could represent workers' interests. Considering that, in these circumstances, direct negotiation between the undertaking and its employees, bypassing sufficiently representative organizations where these existed, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee had requested the Government to amend section 31 so as to ensure that it was clear that it was only in the event where there were no trade unions at the workplace that an authorization to bargain collectively could be conferred to other representative bodies. The Committee notes with ***concern*** that despite its several requests, section 31 of the Labour Code has not been amended. ***The Committee is, therefore, bound to reiterate its previous request and expects that the Government's next report will contain information on the measures taken to that end.***

[The Government is asked to reply in full to the present comments in 2017.]

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political or ideological views. 1. *Law of 24 July 2007 on combating extremism.* In its previous comments, the Committee noted the adoption of the Law of 24 July 2007, to amend certain legal acts with a view to increasing liability for "extremist activities", which includes acts based on racial, national or religious hatred or enmity. It noted that under sections 280, 282.1 and 282.2 of the Penal Code, the following acts are punishable with sanctions of the privation of liberty (which involves compulsory labour); public appeal to perform extremist activities (as defined in section 1 of the Law on combating extremist activity); establishment of an extremist group or organization; and participation in such a group or organization prohibited by a court decision. Regarding the definition of the term "extremist activities", the Committee emphasized that if legislative restrictions are formulated in such broad and general terms that they may lead to penalties involving compulsory labour as a punishment for peaceful expression of views or of opposition to the established political, social and economic system, such penalties are not in conformity with the Convention. The Committee recalled that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. However, the Committee emphasized that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles. Even if certain activities aim to bring about fundamental changes in state institutions, such activities remain protected by the Convention, as long as they do not resort to or call for violent means to these ends. Accordingly, the Committee requested the Government to take measures to ensure that no sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requested the Government to continue to provide information on the application of the laws concerning "extremism" in practice, including information on any prosecutions, and convictions pursuant to sections 280, 282.1 and 282.2 of the Penal Code and the Law on combating extremist activity. The Committee also requested the Government to provide the list of the banned organizations, for which persons' participation may be penalized with sentences of imprisonment involving compulsory labour.

The Committee notes the Government's indication in its report that section 280, paragraph 1, of the Penal Code establishes liability of public appeals for the performance of extremist activities and that paragraph 2 establishes liability for the same deeds committed with the use of the mass media or information and telecommunications networks, including the Internet. The Government indicates that the Law of 24 July 2007 is of a blanket nature and that the provisions of Federal Act No. 114-FZ of 25 July 2002 on counteracting of extremist activity (FZ No. 114) must be followed when categorizing a crime. Thus, the definition of extremist activities is strengthened in section 1 of FZ No. 114. The Committee notes that public appeals, as evoked in section 280 of the Law of 2007, are the expression of any form of appeal to other persons with the aim of provoking them to undertake extremist activities and that the public nature of appeals must be decided by the courts, which will take into account the places, the means, the environment and other circumstances of the cases. The Committee also notes from the Government's report that the penalties provided for by section 280, paragraph 1, of the Law of 2007 consist of a fine for a period of up to two years, or compulsory labour for a term of up to three years, or deprivation of liberty for a term of up to four years or an arrest for a term of four to six months. The Committee notes that according to the Government's indication, section 60, paragraph 3, of the Law of 2007 states that in imposing punishment, the court shall take into consideration the nature or degree or social danger of the crime and the personality of the convict, including any mitigating or aggravating circumstances, and also the influence of the imposed penalty on the rehabilitation of the convicted person. The Committee further notes that according to the Government, compulsory labour is an alternative penalty to deprivation of liberty and that the provisions of the Law of 2007 concerning compulsory labour will be applicable from 1 January 2017. It further notes that the list of penalties established under section 280 allows courts to impose alternative penalties to deprivation of liberty. The Committee also notes the Government's indication that in 2014, 50 persons were convicted under section 280, four persons under section 282.1 and 36 persons under section 282.2. In the first half of 2015, 280 persons were convicted under section 280, three persons under section 282.1 and 17 persons under 282.2. For this period, the Government indicates that all penalties were fines amounting to 300,000 Russian roubles (RUB) and that deprivation of liberty only concerned four persons, while other types of penalties were not imposed. The Committee notes that according to the Government the aforesaid provisions are not tools for the criminal prosecution of persons expressing particular political views or in opposition to the established political, social and economic system.

The Committee notes that in its concluding observations on the seventh periodic report of the Russian Federation on the International Covenant on Civil and Political Rights of 28 April 2015 (CCPR/C/RUS/CO/7, paragraph 20), the Human Rights Committee of the United Nations expresses concern that the vague and open-ended definition of "extremist activity" in the Federal Law on combating extremist activity does not require an element of violence or hatred to be present and that no clear and precise criteria on how materials may be classified as extremist are provided in the law.

The Committee recalls once again that the expression or manifestation of opinions diverging from the established political, economic or social system is protected by the Convention against the imposition of penalties involving compensatory labour. However, the Convention does not prohibit the imposition of such penalty as a sanction for persons who use violence, incite to violence or engage in preparatory acts aimed at violence falls outside its scope. ***The Committee therefore requests, once again, the Government to ensure that no sentence entailing compulsory labour can be imposed on persons, who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. The Committee also requests the Government to provide information on the circumstances under which the sentenced person consents to compulsory labour as an alternative penalty to imprisonment, as well as to continue to provide information on the application of the laws on extremism in practice, including on any prosecutions and sentences pursuant to sections 280, 282.1 and 282.2 of the Penal Code and the Law of 2007 on combating extremism. Please also provide relevant court cases in this regard as well as a copy of the list of banned organizations for which persons' participation may be penalized with sentences of imprisonment involving compulsory labour.***

2. *Federal Law No. 65-FZ of 8 June 2012 amending Federal Law No. 54 FZ of 9 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the Code on Administrative Offences.* The Committee notes the restrictions introduced in Federal Law No. 65-FZ of 8 June 2012 (Assemblies Act) amending Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the Code on Administrative offences. More specifically, the Committee notes that the Law of 8 June 2012 amended section 20.2 of the Code on Administrative Offences which establishes a penalty of community service for a period of up to 50 hours for the organizing or holding of a public event without submitting notice thereof under the established procedures. Section 20.18 establishes administrative arrest for a term up to 15 years for the organization of the blocking, as well as active participation in the blocking, of transport lines. The Committee also notes the introduction of community work as a new sanction in section 3.13: Community work shall entail unpaid work of public utility performed by a physical individual having committed an administrative infringement, carried out during free time outside their principal work, duties or studies. Community work shall be imposed by a judge for a period of between 20 and 200 hours and shall be performed for no more than four hours a day.

The Committee notes that in April 2015 the Human Rights Committee of the United Nations expresses concern about consistent reports of arbitrary restrictions on the exercise of freedom of peaceful assembly, including arbitrary detentions and prison sentences for the expression of political views. The Human Rights Committee is further concerned about the strong deterrent effect on the right to peaceful assembly of these new restrictions introduced in the Assemblies Act (CCPR/C/RUS/CO/7, paragraph 21). In this regard, the Committee also notes the comments made by the European Commission for Democracy through Law (Venice Commission) on this matter (11 March 2013, CDL-AD(2013)003, paragraphs 24–25, 30–31, 36 and 47).

In the light of the above comments, the Committee requests the Government to provide information on the circumstances under which the sentenced person consents to community work. Please provide information on the application in practice of sections 20.2 and 20.18 of the Code on Administrative Offences, indicating the number of prosecutions, the sanctions imposed and the grounds for prosecution.

The Committee is raising other matters in a request addressed directly to the Government.

Russian Federation

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Article 2(1) of the Convention. Scope of application. Children working in the informal economy. The Committee previously noted that section 63(1) of the Labour Code prohibits children under 16 years of age from signing an employment contract. It also noted the Government's statement that the illegal employment of minors and the violation of their labour rights were frequent occurrences in the informal economy. This involved minors who washed cars, engaged in trading and performed auxiliary work. The Committee also noted the information from a study carried out by ILO–IPEC in 2009, within the framework of a project on street children in the region of St Petersburg, that children, some as young as 8 and 9 years old, were engaged in economic activities such as collecting empty bottles and recycling paper, transporting goods, cleaning workplaces, looking after property, street trading and cleaning cars. The Committee further noted that the Committee on Economic, Social and Cultural Rights expressed concern regarding the large number of children who live and work on the streets, in particular in the informal economy where they are vulnerable to abuse to such an extent that regular school attendance is severely restricted. The Committee recalled that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship, and whether or not the employment or work is paid. In this regard, the Committee was of the view that the expansion of the relevant monitoring mechanisms to the informal economy can be an important manner in which to ensure that the Convention is applied in practice, particularly in countries where expanding the scope of the implementing legislation to address children working in this sector does not seem a practicable solution (see General Survey on the fundamental Conventions, 2012, paragraph 345).

While noting information provided by the Government in its report, the Committee notes with ***regret*** that, in spite of its repeated requests made for several years, the Government did not provide any information on the measures taken to address children working outside the scope of an employment contract or in the informal economy. ***The Committee therefore urges the Government to take the necessary measures to ensure that all children under 16 years of age, including those who work on their own account or in the informal economy, benefit from the protection afforded by the Convention. In this regard, the Committee once again requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities without an employment relationship or in the informal economy. It once again requests the Government to provide information on the specific measures taken in this regard.***

Application of the Convention in practice. Labour inspectorate. The Committee previously noted from the Government's report that 2,717 inspections were carried out in 2012 to verify compliance with legislation relating to children under 18 years of age, and 498 such inspections were carried out in the first quarter of 2013. Accordingly, 2,479 violations were detected relating to persons under 18 years of age in 2012, and 288 such violations were detected during the first quarter of 2013. The Committee also noted the Government's information that, in 2012, 1,101 notices were issued by the labour inspectors against employers for violations related to the employment of children, and nine cases were sent to the public prosecutor's office; during the first quarter of 2013, 60 such notices were issued and eight cases were sent to the public prosecutor's office. Most of the violations detected involved failure to conclude contracts, failure to include binding terms in the employment contracts, overtime work and failure to provide protective equipment and health and safety measures.

The Committee notes that the Government's report does not contain any information in this regard. ***The Committee therefore once again requests the Government to pursue its efforts to effectively address and eliminate child labour, and to provide information on the measures taken in this regard. The Committee also once again requests the Government to take the necessary measures to ensure that sufficient updated data on the situation of working children in the Russian Federation is made available, including the number of children working under the minimum age and the nature, scope and trends of their work. Lastly, the Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including information from the labour inspectorate on the number and nature of contraventions reported, violations detected and penalties applied.***

Russian Federation

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. In its previous comments, the Committee noted that while child trafficking is prohibited by law (pursuant to section 127.1 of the Criminal Code), it remains a source of serious concern in practice. The Committee also noted that the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the high prevalence of trafficking in the country, which is a source, transit and destination country for trafficking. Moreover, the Committee noted that the Committee on Economic, Social and Cultural Rights, expressed concern about continued reports of trafficking in women and children for sexual exploitation and abuse.

The Committee notes the information in the additional relevant information submitted by the Government in 2015 to the CEDAW regarding trafficking in persons that, in 2014, 25 offences under section 127.1 of the Criminal Code were reported, 33 cases were solved, 39 persons were found to have committed these offences, and 69 persons were identified as victims of trafficking. During the first six months of 2015, 14 cases of human trafficking were recorded. ***In this regard, the Committee requests the Government to pursue its efforts to ensure the elimination of the sale and trafficking of children and young persons under 18 years of age in practice, by ensuring that thorough investigations and robust prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed. It also requests the Government to continue providing information on the number of reported violations, investigations, prosecutions, convictions and penalties imposed related to the sale and trafficking of children.***

Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee previously noted that the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009) called on the Government to take the necessary measures to ensure the adoption of the draft Law on combating human trafficking, which was under discussion and aimed to establish appropriate measures to ensure the legal protection and social rehabilitation for victims.

The Committee notes the Government's information in its report that the Programme of Cooperation for 2014–18 among the member States of the Commonwealth of Independent States (CIS) contains a set of measures to combat human trafficking and assist victims. The Committee also notes that, according to the Government's report submitted to the CEDAW of 4 August 2014 (CEDAW/C/RUS/8, paragraph 126), the Governmental Commission for the Prevention of Infringement of the Law ordered certain decisions related to victim protection, including a mechanism for registration of child victims, amendments to legislation that provides for state social assistance to victims, a project to provide medical and psychological assistance to witnesses and victims and training programmes for specialists in rehabilitation centres. The Governmental Commission also considered the possibility of opening a shelter for human trafficking victims in Moscow. ***The Committee requests the Government to strengthen its efforts to provide for the removal, rehabilitation and social reintegration of child victims of trafficking. The Committee also requests the Government to provide information on the concrete measures taken to provide assistance to child victims of trafficking and the results achieved in terms of the number of children who have been provided with assistance, particularly within the framework of the Programme of Cooperation for 2014–18 of the CIS. Lastly, the Committee requests the Government to take immediate steps to ensure that legislation on combating trafficking in persons is amended in the very near future to ensure the provision of legal protection and social integration services to child victims of trafficking.***

Article 8. International cooperation and assistance. The Committee noted from the Government's report under the Forced Labour Convention, 1930 (No. 29) that the Programme of Cooperation of the CIS has emphasized the need to join forces to increase the effectiveness of cooperation with non-governmental and international organizations. The Government's report further indicated that the internal affairs agencies of the Russian Federation were continuously involved in a range of operational and preventive measures with the law enforcement bodies of foreign states in order to combat human trafficking. The Committee also noted the Government's information on the investigations carried out by the Russian Ministry of Internal Affairs, together with the National Security Agency of Russia's Interpol arm with the law enforcement agencies of Greece, Malta and the Republic of Moldova. These investigations resulted in the release of 300 young women who had been trafficked from Russia to Greece for sexual exploitation and the arrest of 19 members of a transnational group; eight criminal prosecutions against the members of a transnational group involved in trafficking of women to Malta; and the arrest of two Moldovan citizens for trafficking six Moldovan women to Moscow.

The Committee notes the Government's information in its report that, besides the implementation of the Programme of Cooperation for 2014–18 among member states of the CIS, meetings of working groups and consultations in this regard were also held within other multilateral settings, such as the Collective Security Treaty Organization (CSTO) and the Council of the Baltic Sea States (CBSS). Combating trafficking in persons is also a priority of standing working groups in bilateral police cooperation (e.g. Russian–Israeli, Russian–German and Russian–Austrian groups). The operations of liaison officers accredited at embassies in Moscow and abroad, as well as the use of Interpol resources, allow the speeding up of information exchange and the improvement of cooperative actions. In 2016, the Ministry of Internal Affairs, jointly with the Federal Security Service, the Financial Monitoring Service and the Investigative Committee, planned the execution of a set of investigations and special operations in collaboration with competent authorities of member States of the CSTO to suppress trafficking in persons. ***While taking note of the measures taken by the Government, the Committee strongly encourages the Government to strengthen its international cooperation efforts to combat and eliminate the trafficking of children. It requests the Government to provide information on specific measures taken in this regard within the framework of the Programme of Cooperation of the CIS and other initiatives, and on the results achieved.***

The Committee is raising other points in a request addressed directly to the Government.

C148 - Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

Observation 2016

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 4. Prevention and control of, and protection against, occupational hazards; Article 8. Establishing criteria for determining hazards due to exposure to air pollution, noise and vibration and exposure limits; Article 9. Technical measures to ensure that the working environment is free from any hazard due to air pollution, noise and vibration; and Article 10 of the Convention. Personal protective equipment. The Committee notes that according to the Government's report the definition of the relevant benchmark technical standards with regard to air pollution more generally and vibration, is still pending and that the criteria determining when personal protective equipment is to be provided is directly related to these benchmark technical standards. ***The Committee reiterates its hopes that the technical standards that are reportedly in preparation will be adopted in the near future and asks the Government to provide information on the progress made and copies of them once they have been adopted.***

Article 5. Consultations between the competent authority and the most representative organizations of employers and workers. The Committee welcomes the information provided concerning the extensive consultations held between the Department of Public Health and the most representative organizations of employers and workers on measures to be taken to improve occupational safety and health conditions in small enterprises resulting in the adoption of Decree No. 4 of 14 January 2008 revising Annex I of Decree No. 123/2001. ***The Committee requests the Government to provide information on the practical application of this decree.***

Article 11(3). Alternative employment or other measures to maintain the income of transferred workers. The Committee notes with interest the detailed guidelines on the application of the medical supervision based on Law No. 31/98 and subsequent legislation issued on 20 December 2002 following a thorough process of consultation. This guideline expressly refers to the Occupational Health Services Convention, 1985 (No. 161), and sets out detailed instructions on the way medical examinations have to be done as well as on the legal and medical obligations resulting from this examination. It also notes that workers who show reduced capacity for work in relation to the work performed have the possibility to be employed in protected activities in the state integrating sites *(Cantieri Integrativi dello Stato)*. It also notes that according to article 9 of Decree No. 15/2006, the workers included in the Decree could be employed by the public administration in the terms fixed in the agreement between the State and the union. ***The Committee asks the Government to indicate if the alternative employment referred to is only for workers with disabilities or if it also covers the situation in which exposure to air pollution, noise or vibration is found to be medically inadvisable, even in cases where there is no disability. The Committee also asks the Government to provide information on cases where alternative employment or other measures to maintain the income of transferred workers have been provided in relation to this Article of the Convention.***

Article 16. Penalties and inspection service. Application in practice. The Committee notes the statistical information provided by the Government containing information on the inspections carried out and the following findings: 21 infringements in large enterprises; four in medium enterprises; and one in small enterprises. ***The Committee requests the Government to provide information regarding the measures taken to address these trends and continue to provide detailed information on the application of the Convention in practice, including statistical information disaggregated by sex, if possible; on the number of workers covered by relevant legislation; and the number and nature of contraventions reported.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

C150 - Labour Administration Convention, 1978 (No. 150)

Observation 2016

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Application in practice. ***With reference to the Government's previous report announcing the establishment of the Observatory of Labour and Professions, the Committee would be grateful if the Government would provide information enabling it to assess the manner in which the Convention is applied in practice, including extracts of any reports or other periodic information submitted by the principal services of the labour administration referred in Paragraph 20 of Recommendation No. 158, including the Observatory since its establishment.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

San Marino

C160 - Labour Statistics Convention, 1985 (No. 160)

Observation 2016

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Legislation. ***The Committee requests the Government to indicate any new legal provision relating to matters covered by the Convention and international standards used in designing or revising the concepts, definitions and methods used in the collection, compilation and publication of the statistics required thereby.***

Article 2 of the Convention. ***The Committee asks the Government to provide information on the application of the latest international standards and to specify, for each Article of the Convention for which the obligations were accepted (that is, Articles 7, 8, 9, 10, 11, 12, 13, 14 and 15), which standards and guidelines are followed.***

Article 7. ***The Committee requests the Government to indicate the concepts, definitions and methodology used to produce the official estimates of labour force, employment and unemployment in San Marino.***

Article 8. ***The Committee invites the Government to provide methodological information on the concepts and definitions relating to the register-based labour force statistics in pursuance of Article 6 of this Convention be provided to the ILO.***

Article 9(1). ***Noting that the annual statistics of average earnings and hours actually worked are not yet broken down by sex, the Committee asks the Government to take necessary steps to this end and to keep the ILO informed of any future developments in this field.***

Article 9(2). ***The Committee asks the Government to ensure that statistics covered by these provisions are regularly transmitted to the ILO.***

Article 10. ***The Committee asks the Government to take necessary steps to give effect to this provision and to keep the ILO informed of any developments in this field.***

Article 11. The Committee notes that no information is available on the structure of compensation of employees by major components. ***It therefore asks the Government whether it is possible to compile such statistics for more than four groups in manufacturing, and to communicate these to the ILO as soon as practicable, in accordance with Article 5 of this Convention.***

The Committee also asks the Government to indicate the measures taken to produce, publish and communicate to the ILO specific methodological information on the concepts, definitions and methods adopted to compile statistics of average compensation of employees in pursuance of Article 6.

Article 12. ***The Committee invites the Government to provide the methodological information on the new consumer price indices (CPI) (base December 2002=100) in pursuance of Article 6 of this Convention.***

Article 13. The Committee notes that detailed statistics on household expenditures are regularly published by the Office of Economic Planning, Data Processing and Statistics in the annual publication, *Survey on the consumption and the San Marino families life style*. However, no information is available in this publication about the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics. ***The Committee invites the Government to:***

·(i) indicate whether the representative organizations of employers and workers that were consulted when the concepts, definitions and methodology used were designed (in accordance with Article 3); and

·(ii) communicate a detailed description of the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics as required under Article 6.

Article 14. ***The Committee requests the Government to provide more comprehensive information about the statistical system, with particular reference to the concepts and definitions used for statistics on occupational injuries.***

Article 15. ***As no data on strike and lockout (rates of days not worked, by economic activity) were provided, the Committee invites the Government to communicate data in accordance with Article 5 of this Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Serbia

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

The Committee notes the observations by Education International (EI) and the Teachers Union of Serbia (TUS), dated 8 September 2015.

Articles 1 and 3(d) of the Convention. Equality of opportunity and treatment of men and women. Retirement age of women in the public sector. The Committee notes the observations made by EI and the TUS alleging that section 20 of the Law on Maximum of Employees in the Public Sector, adopted in July 2015, is discriminatory because it obliges women workers in the public sector to retire at the age of 60 years and six months, whereas there is no such restriction for male workers who can work up to the age of 65. EI and the TUS emphasize that the law was adopted without consultation with trade union organizations, and that an estimated 3,500 women in the education sector were forced to retire when the law entered into force on 12 October 2015. EI and the TUS further maintain that section 20 contradicts provisions in several others acts, including: (i) section 175(2) of the Labour Law of 2005, which stipulates that labour relations shall be terminated when an employee turns 65 and has a minimum of 15 years in retirement insurance; (ii) section 19(a)(1) and (2) of the Law on the Pension System, which provides that women can voluntarily retire at the age of 60 and six months in 2015, and at the age of 61 in 2016; and (iii) section 15 of the Constitution regarding gender equality. The Committee recalls that differences in retirement age between women and men can be discriminatory where the amount of the pension is linked to the length of contributory service, as women will receive a lower pension than men, and that earlier retirement ages for women can have a negative impact on women's career paths and access to higher level positions (2012 General Survey on the fundamental Conventions, paragraph 760). ***Recalling that pursuant to Article 3(d) of the Convention the Government is required to ensure the observance of a national equality policy in respect of employment under the direction of a national authority, the Committee asks the Government to reply to observations made by EI and the TUS and to take the necessary measures, in cooperation with the social partners, to ensure that there is no direct or indirect discrimination based on sex with respect to the age of retirement in the public sector, and that the working life of women is not shortened in a discriminatory manner.***

The Committee is raising other matters in a request addressed directly to the Government.

Serbia

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2016

Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. Participation of the social partners. The Government indicates in its report that the Law on Employment and Unemployment Insurance was amended to develop public works as an active employment policy tool to include a greater number of unemployed persons in public works. It adds that the National Employment Service (NES), together with other stakeholders, is implementing projects for capacity building, such as the twinning project "Preparation of labour market institutions of the Republic of Serbia for the European Employment Strategy", which forms part of the 2011 programme cycle of the EU Instrument for Pre-Accession Assistance (EU IPA). While the NES, partly supported through EU IPA projects, is tasked with monitoring and evaluating the measures implemented, it has also concluded 53 agreements on technical cooperation with local governments to implement local employment action plans. The Government adds that its 2015 National Employment Action Plan (NEAP) focuses on employment, vocational guidance and career planning advice for jobseekers, subsidies for employers to hire unemployed persons from the most vulnerable groups, public works, support for self-employment, further education and training as well as the integration of beneficiaries of social assistance into the labour market. The Committee notes from the report that 2,291,525 persons of working age (15–64) were in employment in 2014, an increase of 93,325 people compared to 2013 figures. In 2014, unemployment affected 562,163 persons of working age, which is 92,882 people less than in 2013. Increasing by 0.2 percentage points as compared to 2013, the general activity rate of the working age population stood at 61.8 per cent in 2014. With regard to employment in the informal economy, the Government indicates that comparison of data from 2013 and 2014 shows that the rate of informal employment increased from 19.3 to 22 per cent. According to available data for the first quarter of 2015, the rate of informal employment was measured at 19.4 per cent. In reply to previous observations of workers' organizations on the need to strengthen social dialogue, the Government indicates that measures were under way which are aimed at the establishment and support of local employment councils consisting of representatives of local governments, employers' and workers' organizations. ***The Committee requests the Government to provide information on the impact of employment policies implemented to promote productive employment. Referring to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Committee requests the Government to continue to provide information on the extent of employment in the informal economy and on the measures taken in line with its national employment policy to facilitate the transition to the formal economy. Please also provide information on the participation of the social partners, including local employment councils, in the formulation, adoption and implementation of the employment policy.***

Women. The Government indicates that differences in employment rates for women and men persist. The employment rate of women, 42.9 per cent in 2014, is still significantly lower than the employment rate of men with 56.5 per cent. The unemployment rate of women, while declining between 2013 and 2014 from 24.7 to 20.4 per cent, was 1.2 percentage points higher than that of men (19.2 per cent). Long-term unemployment among women is also higher with 13.5 per cent in 2014, compared to 12.2 per cent for men. ***The Committee requests the Government to continue to provide information on the measures taken to encourage and support labour market participation and social inclusion of women.***

Young persons. The Committee notes that the unemployment rate of young persons in the 15–24 age group was measured at 47.1 per cent in 2014. Although decreasing by 2.3 percentage points when compared to 2013, it remains well above the overall unemployment rate for the population as a whole (19.7 per cent in 2014). Young persons' employment rate increased from 14.5 per cent in 2013 to 14.8 per cent in 2014. During the same period, the activity rate of young persons decreased from 28.7 to 27.9 per cent. Moreover, according to the Statistical Office of Serbia, 20 per cent of young persons were neither in employment nor in education or training. As part of the implementation of employment measures for young persons in 2014, 174,454 young persons (15–30 years old) were registered as unemployed, out of which 125,412 young people were assessed to be eligible for employability projects. In this regard, 123,821 individual employment plans were developed. The 2015 NEAP aims at increasing the number of young persons in labour market training and employment and self-employment programmes. The promotion of entrepreneurship among young persons as well as mentoring programmes for young entrepreneurs were also included within the services of the 2015 NEAP. ***The Committee requests the Government to continue to provide information on the impact of the measures taken to encourage and support youth employment.***

Roma population. The Committee notes that 22,804 members of the Roma minority were unemployed on 31 May 2015. On 31 December 2014, a total of 21,791 persons were unemployed, of which 10,053 were women and 14,669 were long-term unemployed people. In its National Employment Strategy for the period 2011–20 and in the NEAP, the Government has identified the need to improve the employability and the position of particularly vulnerable groups in the labour market, including the Roma population. Building on measures to encourage the employment of the Roma population implemented since 2010, the 2015 NEAP has again determined the members of the Roma minority as the group of unemployed people who need support in the process of work and social activation, integration or re-integration into the labour market. Specialized measures include subsidies for employment as well as additional education and training. ***The Committee requests the Government to provide information on the impact of the measures taken, including through the 2015 National Employment Action Plan, in order to increase labour market participation of the Roma population.***

Spain

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

The Committee notes the observations from the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CCOO), received on 22 August 2016 and 31 August 2016, respectively, and also the Government's reply.

Legislation. The Committee notes the enactment of new Act 23/2015 of 21 July 2015 regulating the labour inspection and the social security system, which repeals and replaces Act 42/1997 of 14 November 1997 regulating labour inspection and social security.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

The Committee notes that in June 2014 the Governing Body approved the report of the tripartite committee set up to examine the representation alleging non-observance by Spain of Convention No. 81, made under article 24 of the ILO Constitution by the National Federation of Associations of Employment and Social Security Sub-inspectors (FESESS) (GB.321/INS/9/2). The Governing Body entrusted the Committee with following up on the issues raised in the report.

Articles 3(1)(a) and (b), 10, 16 and 21(f) and (g) of Convention No. 81; Articles 6(1)(a) and (b), 14, 21 and 27(f) and (g) of Convention No. 129. Number of labour inspectors who perform duties according to the terms of the Convention. Statistics included in the annual report. The Committee notes that the Labour and Social Security Inspectorate (ITSS) comprises the Higher Corps of Labour and Social Security Inspectors and the Corps of Employment and Social Security Sub-inspectors (SESS) and that, according to the ITSS report for 2015, the total number of inspectors for 2008, 2012 and 2015 was 836, 970 and 948, respectively, with the respective number of sub-inspectors for the same years being 910, 919 and 838.

The Committee notes the allegations of the FESESS contained in the tripartite committee's report relating to the inadequate number of labour and social security inspectors to guarantee by themselves the effective performance of labour inspection functions, and also notes the tripartite committee's request that the Committee should follow up on the effect given to its conclusions.

The tripartite committee indicated that, since there was insufficient information on the effectiveness of the labour inspection system, it was not in a position to make an informed assessment, and asked the Government to provide the Committee with the necessary information to follow up on the matter (such as information on the number of inspections, the number of infringements and the number of industrial accidents and cases of occupational diseases). The tripartite committee also stated that, in view of the increase in inspection activities in the area of undeclared work in Spain, the Government should take the appropriate steps to assign sufficient resources to the performance of traditional duties, for example the enforcement of legal provisions relating to occupational safety and health.

The Committee notes that Act 23/2015 provides for the establishment of a National Anti-Fraud Office as a specialized body of the ITSS, and also notes the observations of the UGT and CCOO claiming that this function is already performed by the ITSS and that there is no need for a new office in relation to this matter. The UGT also alleges that the increase in action against irregular employment and social security fraud is a source of concern since there has been no change in the number of inspectors. The CCOO observes that inspection activity in terms of the enforcement of the legal provisions relating to areas such as conditions of work or occupational risk prevention is limited and only accounts for about 26 per cent of inspection activities at a time when industrial accidents are known to be increasing. The CCOO therefore considers that irrespective of activities to detect irregular employment, which are certainly relevant, these other matters which have been relegated to a secondary level by the inspectorate need to be raised to the same level of importance.

The Government indicates in its report that the distribution of inspection activities by subject matter between 2013 and 2015 has not varied significantly by comparison with previous periods. It also explains that the National Anti-Fraud Office seeks to adopt a comprehensive approach to the phenomenon of fraud. According to the Government, fraud not only results in an undue diversion of resources from the social security system, or a non-existent or inadequate contribution to its upkeep, but that it is in most cases also connected to situations of labour exploitation where workers are denied their rights, especially those relating to recognition of their conditions of work. It also states that selection procedures were launched on 13 September 2016 to fill 53 posts for labour and social security inspectors, 50 posts for SESS in the OSH category and 42 for SESS in the employment and social security category.

As regards the information needed to enable an evaluation of the effectiveness of labour inspection and the Committee's previous request for disaggregated statistical information on industrial accidents and occupational diseases, indicating their respective causes, the Committee notes that the 2015 annual report does not contain any statistics on the number of inspections conducted (given that the recorded number of activities refers to both inspections and other activities) or on the workplaces liable to inspection and the number of workers employed therein. It also notes the Government's indication that it is taking steps to obtain data on the causes of industrial accidents and occupational diseases. ***The Committee therefore requests that the Government provide information on the human resources policy followed on identifying the number of inspectors and sub-inspectors needed with a view to adequate coverage of the workplaces liable to inspection (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129) and on any changes in the selection procedures referred to above.***

The Committee also requests that the Government supply information on the setting up of the National Anti-Fraud Office (including the number of inspectors assigned to it and their duties) and to send data on all inspection activities for the period covered by the next report, disaggregated by subject, which come within the competence of the ITSS. Lastly, the Committee requests that the Government take the necessary steps to ensure that the abovementioned data are included in the annual inspection statistics.

Article 12(1)(c)(ii) of Convention No. 81. On the basis of the tripartite committee's report, the Governing Body invited the Government to consider the possibility of granting SESS, in law and in practice, the powers and prerogatives provided for under the Convention where they are needed or useful for the performance of their duties in conformity with the objective of the Convention, as is the case with the duties that they perform in the social security sphere. The Committee noted that Act 42/1997 of 14 November 1997 did not give SESS the power to copy documents or to make extracts from them, as provided for in *Article 12(1)(c)(ii)* of the Convention *in fine.* The Committee notes with ***satisfaction*** that section 14(4) of the new Act 23/2015 provides that, for the purposes of performing their duties, SESS may proceed in the manner established in section 13(1)–(3), which grants them the powers provided for in *Article 12(1)(c)(ii).* ***Referring to the conclusions of the tripartite committee, the Committee considers that, since the Government has decided to expand the prerogatives of SESS to include those provided for in Convention No. 81, particularly those empowering them to copy documents (Article 12(1)(c)(ii)), it should also consider examining the related legal issues that arise in the context of the Basic Act on labour and social security inspection (Act 23/2015), in conjunction with the Basic Act on civil protection of the right to honour, personal and family privacy, and personal reputation (LOPCDH). The Committee requests that the Government communicate any progress made in this respect.***

The Committee is raising other matters in a request addressed directly to the Government.

Spain

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

The Committee notes the observations from the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CCOO), received on 22 August 2016 and 31 August 2016, respectively, and also the Government's reply.

Legislation. The Committee notes the enactment of new Act 23/2015 of 21 July 2015 regulating the labour inspection and the social security system, which repeals and replaces Act 42/1997 of 14 November 1997 regulating labour inspection and social security.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

The Committee notes that in June 2014 the Governing Body approved the report of the tripartite committee set up to examine the representation alleging non-observance by Spain of Convention No. 81, made under article 24 of the ILO Constitution by the National Federation of Associations of Employment and Social Security Sub-inspectors (FESESS) (GB.321/INS/9/2). The Governing Body entrusted the Committee with following up on the issues raised in the report.

Articles 3(1)(a) and (b), 10, 16 and 21(f) and (g) of Convention No. 81; Articles 6(1)(a) and (b), 14, 21 and 27(f) and (g) of Convention No. 129. Number of labour inspectors who perform duties according to the terms of the Convention. Statistics included in the annual report. The Committee notes that the Labour and Social Security Inspectorate (ITSS) comprises the Higher Corps of Labour and Social Security Inspectors and the Corps of Employment and Social Security Sub-inspectors (SESS) and that, according to the ITSS report for 2015, the total number of inspectors for 2008, 2012 and 2015 was 836, 970 and 948, respectively, with the respective number of sub-inspectors for the same years being 910, 919 and 838.

The Committee notes the allegations of the FESESS contained in the tripartite committee's report relating to the inadequate number of labour and social security inspectors to guarantee by themselves the effective performance of labour inspection functions, and also notes the tripartite committee's request that the Committee should follow up on the effect given to its conclusions.

The tripartite committee indicated that, since there was insufficient information on the effectiveness of the labour inspection system, it was not in a position to make an informed assessment, and asked the Government to provide the Committee with the necessary information to follow up on the matter (such as information on the number of inspections, the number of infringements and the number of industrial accidents and cases of occupational diseases). The tripartite committee also stated that, in view of the increase in inspection activities in the area of undeclared work in Spain, the Government should take the appropriate steps to assign sufficient resources to the performance of traditional duties, for example the enforcement of legal provisions relating to occupational safety and health.

The Committee notes that Act 23/2015 provides for the establishment of a National Anti-Fraud Office as a specialized body of the ITSS, and also notes the observations of the UGT and CCOO claiming that this function is already performed by the ITSS and that there is no need for a new office in relation to this matter. The UGT also alleges that the increase in action against irregular employment and social security fraud is a source of concern since there has been no change in the number of inspectors. The CCOO observes that inspection activity in terms of the enforcement of the legal provisions relating to areas such as conditions of work or occupational risk prevention is limited and only accounts for about 26 per cent of inspection activities at a time when industrial accidents are known to be increasing. The CCOO therefore considers that irrespective of activities to detect irregular employment, which are certainly relevant, these other matters which have been relegated to a secondary level by the inspectorate need to be raised to the same level of importance.

The Government indicates in its report that the distribution of inspection activities by subject matter between 2013 and 2015 has not varied significantly by comparison with previous periods. It also explains that the National Anti-Fraud Office seeks to adopt a comprehensive approach to the phenomenon of fraud. According to the Government, fraud not only results in an undue diversion of resources from the social security system, or a non-existent or inadequate contribution to its upkeep, but that it is in most cases also connected to situations of labour exploitation where workers are denied their rights, especially those relating to recognition of their conditions of work. It also states that selection procedures were launched on 13 September 2016 to fill 53 posts for labour and social security inspectors, 50 posts for SESS in the OSH category and 42 for SESS in the employment and social security category.

As regards the information needed to enable an evaluation of the effectiveness of labour inspection and the Committee's previous request for disaggregated statistical information on industrial accidents and occupational diseases, indicating their respective causes, the Committee notes that the 2015 annual report does not contain any statistics on the number of inspections conducted (given that the recorded number of activities refers to both inspections and other activities) or on the workplaces liable to inspection and the number of workers employed therein. It also notes the Government's indication that it is taking steps to obtain data on the causes of industrial accidents and occupational diseases. ***The Committee therefore requests that the Government provide information on the human resources policy followed on identifying the number of inspectors and sub-inspectors needed with a view to adequate coverage of the workplaces liable to inspection (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129) and on any changes in the selection procedures referred to above.***

The Committee also requests that the Government supply information on the setting up of the National Anti-Fraud Office (including the number of inspectors assigned to it and their duties) and to send data on all inspection activities for the period covered by the next report, disaggregated by subject, which come within the competence of the ITSS. Lastly, the Committee requests that the Government take the necessary steps to ensure that the abovementioned data are included in the annual inspection statistics.

Article 12(1)(c)(ii) of Convention No. 81. On the basis of the tripartite committee's report, the Governing Body invited the Government to consider the possibility of granting SESS, in law and in practice, the powers and prerogatives provided for under the Convention where they are needed or useful for the performance of their duties in conformity with the objective of the Convention, as is the case with the duties that they perform in the social security sphere. The Committee noted that Act 42/1997 of 14 November 1997 did not give SESS the power to copy documents or to make extracts from them, as provided for in *Article 12(1)(c)(ii)* of the Convention *in fine.* The Committee notes with ***satisfaction*** that section 14(4) of the new Act 23/2015 provides that, for the purposes of performing their duties, SESS may proceed in the manner established in section 13(1)–(3), which grants them the powers provided for in *Article 12(1)(c)(ii).* ***Referring to the conclusions of the tripartite committee, the Committee considers that, since the Government has decided to expand the prerogatives of SESS to include those provided for in Convention No. 81, particularly those empowering them to copy documents (Article 12(1)(c)(ii)), it should also consider examining the related legal issues that arise in the context of the Basic Act on labour and social security inspection (Act 23/2015), in conjunction with the Basic Act on civil protection of the right to honour, personal and family privacy, and personal reputation (LOPCDH). The Committee requests that the Government communicate any progress made in this respect.***

The Committee is raising other matters in a request addressed directly to the Government.

Spain

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

Observation 2016

The Committee notes the observations of the General Union of Workers (UGT), received on 22 August 2016, and the Trade Union Confederation of Workers' Commissions (CCOO), received on 31 August 2016, and the Government's reply to their observations.

Articles 3 and 9 of the Convention. Measures to apply the Convention in order to create effective equality of opportunity and treatment for men and women workers. In its previous comments, the Committee requested the Government to continue to provide information on the implementation in practice of all the measures adopted to apply the Convention, particularly Basic Act No. 3/2007 on effective equality between men and women and the related agreements. In this respect, the Committee notes that the UGT and the CCOO refer to the adoption of Act No. 3/2012 of 6 July 2012 on urgent measures to reform the labour market, which introduces amendments to the revised text of the Workers' Charter and which, according to the trade union organizations, signifies a step backwards from the progress that had been made following the adoption of Basic Act No. 3/2007. The UGT and the CCOO refer in particular to: the ending of subsidized contributions for women who return to work within two years following the maternity leave or extended leave, the restriction on the right to a reduction in working time for legal guardianship, the unilateral power of the employer in respect of flexible working arrangements for the reconciliation of work and family life, and the failure to extend paternity leave to four weeks, as envisaged. They also indicate that measures to promote shared responsibilities between men and women have not been adopted.

The Committee notes in this respect the Government's indication that, while the new Act reduces the subsidy for mothers who have made use of leave or have been on extended leave, it increases assistance to enterprises that hire women who were unemployed. With regard to working time reductions for childcare, which can no longer be accumulated on a weekly or monthly basis, the Government indicates that these measures seek to optimize work–life balance without prejudicing the organization or functioning of the enterprise, but that other types of working time arrangements and measures for the reconciliation of work and family life can be agreed through collective bargaining at the enterprise level. With respect to the postponement of the extension of paternity leave to four weeks, the Government explains that this measure was proposed because such an extension would have a significant impact on the social security budget, but that its entry into force is envisaged for January 2017. The Committee notes that the Act also provides that entitlement to nursing breaks apply not only to women workers, but also to men workers, and that absences owing to family responsibilities will not be counted as absence from work. The Committee further notes that the Government reports the adoption of the Second Plan for Equality in the General Administration of the State and its Public Bodies, as well as the Equal Opportunities Strategic Plan 2014–16, the Comprehensive Family Support Plan 2015–17 and the Plan for the Promotion of Rural Women 2015–18, which include measures to facilitate the reconciliation of work and family life. ***The Committee requests the Government to continue providing information on the application in practice of Act No. 3/2007 and on the effect in practice of Act No. 3/2012 on the policy to enable men and women workers to reconcile their work and family responsibilities, particularly with respect to the reduction of working time and the extension of paternity leave to four weeks. The Committee also requests the Government to provide information on the specific measures adopted for the application of the Convention under the plans mentioned above and on any collective agreements that contain clauses on reducing working time.***

Article 4. Part-time workers. In its previous comments, the Committee requested the Government to indicate whether men or women workers who choose to work part time have the same training opportunities as full-time workers. The Committee notes the Government's indication that part-time workers have the same rights as full-time workers under the provisions of section 12.4(d) of the Workers' Charter. The Government also refers to sections 4.2 and 23, which recognize the right of all workers to vocational training. The Committee notes that, according to the CCOO and the UGT, the current regulations have made part-time work much more flexible, which implies that it is no longer voluntary and that workers have to be available for longer periods to the enterprise, which has a negative impact on the reconciliation of work and family life. This especially affects women, who account for 74.19 per cent of part-time workers. The Committee notes the Government's indication that Royal Decree No. 16/2013 of 20 December on measures to favour stable employment and improve workers' employability establishes limits on overtime for part-time workers, and that overtime may not be applicable for workers with family responsibilities. The Government adds that part-time work in itself is a way to reconcile family and work responsibilities. ***The Committee requests the Government to take measures with a view to ensuring that the situation of workers with family responsibilities is taken into account when giving effect to Royal Decree No. 16/2013, which contains provisions on part-time work and overtime. The Committee also requests the Government to provide statistical data on the number of workers with family responsibilities who work full time and part time, disaggregated by sex, including the hours worked.***

Article 4(b). Conditions of employment and social security. The Committee notes the adoption of Act No. 27/2011 of 1 August 2011 updating, adjusting and modernizing the social security system, which establishes that the period during which work is interrupted due to the birth of a child or the adoption or care of a child under 6 years of age, as well as the three-year period of extended leave to which men and women workers are entitled for the care of each child or minor in their care, shall be counted as effective periods of contribution for the purposes of social security benefits. The Committee also notes the amendment of the General Social Security Act, through the introduction of a "maternity supplement" for the pensions of women who have given birth to or adopted children, and the adoption of Act No. 25/2015 of 28 July 2015 introducing "second chance" measures, a reduction of costs and other social measures, which amends the Charter for Self-Employed Workers and provides for the coverage of 100 per cent of the contribution for common contingencies for self-employed workers with a view to the reconciliation of work and family life in relation to employment. The Committee nevertheless observes that, according to the UGT, the adoption of anti-crisis and public cost-cutting measures has resulted in a significant reduction of maternity and paternity benefits. ***The Committee requests the Government to provide information on the impact that anti-crisis and public cost-cutting measures have had on the social benefits granted to workers with family responsibilities, including statistical data, so that it can assess the changes in these benefits over the years.***

The Committee is raising other matters in a request addressed directly to the Government.

C158 - Termination of Employment Convention, 1982 (No. 158)

The Committee notes the observations from the General Union of Workers (UGT), received on 22 August 2016, from the Trade Union Confederation of Workers' Commissions (CCOO), received on 31 August 2016, and from the International Organisation of Employers (IOE), received on 1 September 2016. It also notes the joint observations from the Spanish Confederation of Employers' Organizations (CEOE) and the IOE, also received on 1 September 2016, and the Government's reply, received on 26 October 2016. Furthermore, it notes the adoption of Royal Legislative Decree 2/2015 of 24 March 2015 adopting the amended text of the Workers' Statute.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

In its report, the tripartite committee set up to examine the representation made under article 24 of the ILO Constitution by the CCOO and the UGT found that it lacked sufficient basis to consider that the extension to one year of the exclusion from the scope of the Convention might be considered reasonable, especially as this extension was not the result of social dialogue and was introduced in this type of employment contract which was of a general nature. The tripartite committee consequently invited the Government to provide information on the evolution of the "entrepreneur-support contract" and, in light of the information available, to examine the possibility of adopting measures, in consultation with the social partners, to ensure that this contractual arrangement is not terminated at the initiative of the employer in order to avoid in an abusive manner the protection provided for in the Convention.

The UGT and the CCOO state that the Government has not followed up on the recommendation of the tripartite committee to increase its efforts to strengthen social dialogue and, in consultation with the social partners, to seek solutions to economic problems that are consistent with the Convention (paragraph 226 of GB.321/INS/9/4). The CCOO adds that not only has the Government failed to arrange meetings with the social partners to hear and take into consideration their proposals regarding labour legislation, especially the regulatory framework governing dismissals, but it has also continued to adopt legislation without any real consultation of the trade unions. By way of example, the CCOO refers to the case of Royal Legislative Decree 2/2015 of 24 March 2015, in respect of which the statutory minimum period of seven working days was applied to consultations with the trade unions and employers' organizations, a period that the Economic and Social Council, in its opinion dated 28 July 2015, considered insufficient "for ensuring adequate consultations on a legal standard of this nature and importance". In reply to the observations of the CCOO on consultations in the context of the Royal Legislative Decree, the Government considers that the time allocated to the trade unions and employers' organizations to make observations on the draft legislation was sufficient, since the adopted legislation entailed amendments limited to formulating a single text regularizing, clarifying and harmonizing the consolidated texts, in accordance with article 82.5 of the Spanish Constitution.

Exclusions. Establishment of a one-year trial (probationary) period under the "entrepreneur-support contract". Further to the tripartite committee's invitation to provide information on developments concerning the "open-ended entrepreneur-support contract" (CAE), the Government states that an analysis of recruitment, using data available up to January 2016, shows that, after a period of 13 months under contract, 49.1 per cent of workers on CAE contracts were still employed (59.2 per cent of the total number of workers holding contracts with discounts were still employed, compared with 43.1 per cent of those holding contracts without such discounts), compared with 62 per cent of persons holding standard open-ended contracts (contracts of indefinite duration). The UGT indicates that the destruction of jobs, which was already significant before the labour reform because of the economic and financial crisis, has accelerated drastically. It observes that, according to the statistics supplied by the Government, CAE contracts *with* discounts for employers (but not CAE contracts *without* discounts for employers) display patterns similar to those of standard open-ended contracts. The UGT and CCOO observe that the number of CAE contracts without employer discounts terminated on or before 13 months exceeds that of open-ended contracts between 13 and 18.9 percentage points. The UGT expresses its concern at the increase in CAE contracts, which in 2016 accounted for 38 per cent of open-ended contracts. The CCOO indicates that, since December 2013, it has been possible to conclude part-time "open-ended entrepreneur-support contracts" (Royal Decree-Law 16/2013 of 20 December 2013), but no disaggregated data are available that show what proportion of the increase in CAEs in 2014 and 2015 corresponds to part-time contracts. The CCOO also considers that the increase in job rotation for open-ended employment is resulting in growing precariousness for open-ended contracts and that the 2012 labour reform is adding to the instability of open-ended employment during the recovery period. On the other hand, the CEOE and IOE consider that the one-year trial period does not violate the provisions of the Convention. They refer to ruling No. 8/2015 of 22 January 2015 handed down by the Constitutional Court (constitutional challenge No. 5610-2012), in which the various grounds submitted to challenge the trial period were dismissed, since the trial period meets the requirement of proportionality and constitutes a necessary and appropriate measure. In its reply to the observations of the CCOO and UGT, the Government indicates that, as regards recruitment analysed with information updated to September 2016, it can be seen that, after 13 months on contract, 47.2 per cent of persons holding CAE contracts are still employed (of these, 59 per cent are contracts with employer discounts, while 41.2 per cent are contracts without employer discounts), compared with 64.3 per cent of persons holding standard open-ended contracts and 8 per cent of persons holding temporary contracts. ***The Committee requests the Government to continue providing information on developments relating to CAE contracts, particularly part-time CAE contracts and CAE contracts without discounts for employers, disaggregated by sex where possible.*** This Committee recalls that it is for each country to determine the reasonableness of a probationary period under *Article 2(2)(b)* of the Convention depending on the nature of, and qualifications required for the job. The Committee considers, like the tripartite committee, that an important factor in determining the reasonableness of a probationary period is whether it is the result of social dialogue. ***The Committee requests the Government to indicate whether in the light of available information it has examined the possibility of adopting measures, in consultation with the social partners to prevent CAE contracts being terminated at the initiative of the employer with the aim of avoiding the protection afforded by the Convention.***

Articles 1, 8(1), 9(1) and (3). New regulations concerning economic, technical, organizational or production-related reasons for dismissal. The Government indicates that in 2015 the Supreme Court handed down 40 rulings relating to collective dismissals; the dismissals were declared lawful in 22 cases, unlawful in five, and null and void in 13. The CCOO indicates that, by comparison with the previous year, the number of files dealing with the regulation of employment (EREs) – relating to the termination of employment, lay-offs or reductions in hours – communicated between January and December 2015 fell by 46 per cent, while the number of persons affected decreased by 37 per cent. A total of 24.4 per cent of people affected by EREs had their contracts terminated (collective dismissals), amounting to 24,572 individuals, most of them belonging to the services sector (66 per cent) and industry (26 per cent). The CCOO refers to the Supreme Court ruling of 20 October 2015 (Case No. 172/2014), which deals with judicial review of the grounds for collective and objective dismissal, and also with whether those grounds are reasonable and proportionate. The CEOE and IOE, on the other hand, consider that the amendments introduced by the 2012 labour reform regarding collective dismissal do not violate the provisions of the Convention. They reiterate their observations of 2015 regarding the greater involvement of the courts in labour relations, especially with regard to collective dismissals. They mention the proposals put forward by the employers' organizations to reduce the duality of the labour market and give greater legal certainty to employers' decisions, with respect to the bonus of eight days' compensation by the Wage Guarantee Fund (FOGASA) in cases of contracts terminated on objective grounds and collective dismissals. The Government indicates in its reply that the judicial rulings referred to by the CCOO are concerned with aspects of the labour legislation which were amended by the 2012 labour reform. In its reply to the joint observations of the CEOE and IOE concerning collective dismissals, the Government explains that the basis for administrative and judicial review is to be found in the Convention itself (*Articles 4, 8, 9(3)* and *14(1)*). Moreover, the Government considers that the proposals put forward by the employers' organizations regarding the review of collective dismissals in the administrative or judicial spheres are aimed at reducing or abolishing controls by the competent authorities. As regards the observations regarding the greater involvement of the courts in labour relations, an issue also raised in 2015, the Government refers to the reply made at the time. ***The Committee requests the Government to continue providing information on the manner in which the regulations concerning the economic, technical, organizational or production-related reasons for dismissal are applied in practice, including up-to-date statistics on the number of appeals made, the outcome of those appeals and the number of cases of termination for economic or similar reasons.***

Article 6. Changes in the regulations on absence from work because of duly certified illness or accident. Dismissal for absenteeism. The Committee notes the rulings of the higher courts referred to by the Government dealing with the calculation of absences from work due to temporary incapacity. The Government recalled that absences due to medical treatment for cancer or any other serious illness are explicitly included in the category of those excluded from the calculation of absences. The Committee also notes the rulings handed down by the High Court of Madrid and the Supreme Court, referred to by the CCOO, dealing with objective dismissal for absenteeism (before and after the 2012 labour reform) and dismissal in situations of temporary incapacity, respectively. The CEOE and IOE consider that the labour reform provided a response to the serious problem of absenteeism, especially sick leave for common illnesses of short duration. They recall that the annual cost of absenteeism to employers in Spain is €7,250 million, of which over €6,500 million corresponds to incapacity for work due to common contingencies (direct contributions from enterprises). ***The Committee requests the Government to continue providing information on the manner in which absences due to temporary incapacity are calculated.***

Article 10. Abolition of compensation wages in cases where the employer opts for termination of employment despite a court ruling of unfair dismissal. The Committee notes the information provided by the Government on the fifth transitional provision of Act No. 3/2012 of 6 July 2012 establishing urgent measures for reform of the labour market, relating to the calculation of compensation for unfair dismissal with respect to contracts formalized before and after 12 February 2012, equivalent to 45 and 33 days' wages, respectively, for each completed year of service, with a pro rata amount per month for periods of less than a year in both cases, up to a maximum of 720 days' wages. If, in calculating the compensation for the period before 12 February 2012, the number of days exceeds 720, the latter figure will be regarded as the maximum applicable to the amount of compensation, up to a maximum of 42 monthly payments. The CEOE and IOE consider that the abolition of compensation wages, together with the reduction of compensation to 33 days' wages, has helped to reduce the costs of dismissal and is conducive to overcoming labour market duality and competitive disadvantages. ***The Committee requests the Government to continue providing information on the number and nature of compensation granted, including examples of court decisions that found that the termination of employment was unjustified.***

The Committee is raising other matters in a request addressed directly to the Government.

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

The Committee notes the observations from the General Union of Workers (UGT), received on 22 August 2016, and from the Trade Union Confederation of Workers' Committees (CCOO), received on 1 September 2016, as well as the Government's report.

Article 7(2) of the Convention. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such labour and ensuring their rehabilitation and social integration. Trafficking for sexual exploitation. The Committee previously noted the numerous measures taken by the Government for combating the trafficking and sexual exploitation of children and young persons. However, the Committee also noted that, despite major efforts by the Government to combat this practice, there are significant gaps in the recording of data concerning foreign children intercepted at borders. The latter are not automatically registered in police databases, which prevents child protection services from being aware of their presence on the territory and from detecting children who are potential victims of trafficking.

The Committee notes the observation by the CCOO that there are some 45,000 women and girls who are victims of trafficking in Spain. Moreover, the Committee notes the Government's indication in its report that a new "Comprehensive plan to combat the trafficking of women and girls for sexual exploitation (2015–18)" has been approved and that for the first time it includes a specific reference to girls, who are worst affected by the trafficking of young persons. The Committee notes with ***interest*** the entry into force in 2014 of a "Framework Protocol on certain measures concerning unaccompanied foreign minors (MENAS)", which serves to rectify the shortcomings in the coordination and registration of such minors by the authorities. Children who have been intercepted are now automatically registered in police databases and a procedure has been established to ensure systematic follow-up and protection for them. However, the Committee notes that, according to the Government's report to the Committee on the Rights of the Child (CRC) in May 2016, the Ministry of the Interior recorded six children who were victims of trafficking for sexual exploitation in 2012 and 12 children who were victims in 2013, most of whom were girls between 14 and 17 years of age. Moreover, the Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 29 July 2015, remained concerned about the prevalence of the trafficking of girls to Spain (CEDAW/C/ESP/CO/7-8, paragraph 22). ***The Committee encourages the Government to pursue its efforts to protect young persons under 18 years of age, particularly girls and migrant children, against trafficking for sexual exploitation. It requests the Government to supply information on the number of migrant children registered in the context of the Protocol and on the procedure implemented to ensure follow-up for them and prevent their involvement in the worst forms of child labour.***

Clause (d). Children at special risk. Migrant children and unaccompanied minors. The Committee previously noted a reduction in the levels of effective protection as a result of the austerity measures adopted by Spain, which has had a disproportionate impact on the exercise of the rights of migrant children and asylum seekers. Furthermore, the Committee observed that education has been one of the sectors hardest hit by the budgetary restrictions and it asked the Government to intensify its efforts to protect migrant children, especially by ensuring their integration into the education system.

The Committee notes that, according to the observations from the UGT, the compensatory education programme whose main objective is to promote equal opportunities for migrant children and their social and educational integration has had its budget cut by 97 per cent between 2011 and 2016 (the budget allocated by the Government in 2011 was €70,084,280 compared with €5,113,220 in 2016). The UGT emphasizes that this reduction in the budget for compensatory education affects both foreign students and those from ethnic minorities. Moreover, the Committee notes that, according to the concluding observations of 13 May 2016 of the Committee on the Elimination of Racial Discrimination (CERD), there are major differences in the quality of education received by ethnic minorities and the phenomenon of "ghetto" schools, where there are large concentrations of migrant children, persists (CERD/C/ESP/CO/21-23, paragraph 31). CERD recommends the Government to take the necessary steps to ensure a more egalitarian distribution of students in order to put an end to the phenomenon of "ghetto" schools. ***Recalling once more that migrant children are particularly exposed to the worst forms of child labour, the Committee requests the Government to intensify its efforts to protect these children from the worst forms of child labour, particularly by ensuring their integration into the education system. It also requests the Government to provide information on the measures taken and the results achieved in this respect. The Committee further requests the Government to provide information on the compensatory education programme and the results achieved by it.***

The Committee is raising other matters in a request addressed directly to the Government.

Switzerland

C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)

Observation 2016

Part VI. Employment injury benefit. Referring to its previous comments, the Committee notes with ***satisfaction*** the revision of the Federal Accident Insurance Act (LAA) approved on 25 September 2015, to give effect to *Article 32(d) of the Convention* (in conjunction with *Article 69(j)*) by amending the provisions of section 29 of the LAA under which the surviving spouse's entitlement to benefit were subject to certain conditions where the marriage was contracted after the accident causing the decease of the insured person and allowed benefits to be refused or reduced when the surviving spouse has been in serious breach of his/her duties towards their children. In addition, in accordance with *Article 34(1)* and *(2)* of the Convention, section 10(3) of the LAA was also modified to authorize the Federal Council to fix the conditions, which must be fulfilled by an insured person to receive nursing care at home, which requires changes to be made to the regulation on accident insurance. The Government indicates that the revised Act and regulation will most likely enter into force on 1 January 2017. ***The Committee would be grateful if the Government would provide further information in this respect in its next report.***

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. In its previous comments, the Committee noted that the Penal Code punishes anyone who commits a sexual act with a child under 16 years of age (section 187) or who induces a minor (a person under 18 years of age) to engage in prostitution (section 195). Since 2003, the Committee had been noting that, although section 195 covers the prohibition set out in the Convention, the Penal Code is not in conformity with the Convention in that section 187 only punishes an act of a sexual nature committed on a person under 16 years of age. It emphasized that it is necessary to make a distinction between the age of sexual consent and the freedom to engage in prostitution. It considered that, even though the national legislation recognizes that a young person over 16 years of age may lawfully consent to a sexual act, the age of consent does not affect the obligation to prohibit this worst form of child labour. It also considered that the fact of engaging in a sexual act with a young person under 18 years of age in exchange for remuneration, with or without consent, constitutes the use of a child for prostitution. The Committee further noted that section 197 of the Penal Code punishes the use, procuring or offering of a child for the production of pornography. However, it noted that the term "child" used in section 197(3) of the Penal Code, which prohibits the production of pornography involving children, only covers persons under 16 years of age. In this respect, the Government indicated that, following the signature in June 2010 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), amendments would be needed to the Penal Code. These amendments would include the criminalization of the use of young persons between the ages of 16 and 18 years for prostitution and the extension of the scope of application of section 197 to young persons between the ages of 16 and 18. It indicated that a draft report on the implementation and ratification of the Convention was under preparation by the Federal Office of Justice and that the consultation procedure would be launched as soon as possible so that a message could be submitted to the Federal Chambers in 2012. The Committee also noted that the Federal Order of 27 September 2013 to approve and implement the Lanzarote Convention provides for the revision of certain provisions of the Penal Code and expressed the firm hope that these amendments would be implemented shortly.

The Committee notes with ***satisfaction*** the Government's indication in its report that, in the context of the implementation of the Lanzarote Convention, the relevant provisions of the Penal Code have been revised, thereby bringing the legislation into conformity with the Convention. The amendments, which entered into force on 1 July 2014, relate to section 195 of the Penal Code, which now prohibits the incitement of any minor (a person under 18 years of age) to engage in prostitution, and section 197(3) which now prohibits the procuring of any minor for the production of pornography. The Committee also notes the statistics provided by the Government on this subject. In 2014, there were two victims of incitement to prostitution aged under 18 years, and in 2015, there were three such victims. The Committee also notes that the number of rulings issued under section 197 of the Penal Code concerning minors was 318 in 2014 and 216 in 2015. ***The Committee requests the Government to continue providing information on the effect given in practice to sections 195 and 197(3) of the Penal Code, with an indication of the number of investigations conducted, prosecutions, convictions and penalties applied.***

Tajikistan

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Observation 2016

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound repeat its previous comments.

Equality of opportunity and treatment between men and women. Legislative developments. The Committee notes the adoption of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005. It notes that the Law defines and prohibits discrimination based on sex in any sphere (sections 1 and 3), and provides for the obligation of public authorities to ensure gender equality (section 4). The Law further includes provisions concerning state guarantees regarding equal opportunities between men and women in the sphere of education and science (section 6) and in the state service (Chapter 3). Equal opportunities in the socio-economic sphere (Chapter 4) include measures aimed at advancing gender equality in labour relations (section 13), provisions placing on the employer the burden of proof to demonstrate the lack of intent to discriminate (section 14), measures aimed at ensuring gender equality in the mass termination of employment (section 15) and measures ensuring equal opportunities of men and women in collective contracts and agreements (section 16). Finally, the Law includes certain provisions aimed at assisting workers with family responsibilities (section 7). ***The Committee requests the Government to provide information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005, including on the manner in which violations of its provisions are being addressed.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

C120 - Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

Observation 2016

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee reminds the Government that, by ratifying a Convention, it undertakes to give full effect to all its provisions in law and practice and to submit reports on the subject. ***Consequently, it requests the Government to provide detailed information on the specific legal provisions and other measures giving effect to each of the Articles of the Convention and to provide a copy of these provisions, if possible in a working language of the ILO. It also requests the Government to send information on any technical assistance requested or received in this regard.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Tajikistan

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Article 2(1) of the Convention. 1. *Minimum age for admission to employment or work.* The Committee previously noted that, at the time of ratification, Tajikistan specified a minimum age of 16 years for admission to employment or work. The Committee, however, noted that while section 180 of the Labour Code of 1973 establishes a minimum age of 16 years, section 174 of the Labour Code of 15 May 1997 only prohibits the employment of persons under the age of 15 years. Recalling that by virtue of *Article 2(1)* of the Convention, no one under the minimum age for admission to employment or work, specified upon ratification of the Convention (16 years), shall be admitted to employment or work in any occupation except for light work as authorized under *Article 7* of the Convention, the Committee urged the Government to take the necessary measures to bring the national legislation into conformity with the Convention.

The Committee notes that a new Labour Code was adopted in July 2016. It notes with ***regret*** that, despite its reiterated comments for many years, Chapter 13, section 174 of the new Labour Code prohibits the employment of children under 15 years, which is lower than the minimum age of 16 years specified by the Government at the time of ratification. The Committee emphasizes that the objective of the Convention is to eliminate child labour and that it allows and encourages the raising of the minimum age but does not permit the lowering of the minimum age once specified. ***The Committee therefore strongly urges the Government to take the necessary measures to ensure that section 174 of the Labour Code of 2016 is amended in order to align this age to the one specified at the time of ratification, namely a minimum age of 16 years, and bring it into conformity with the provisions of the Convention. It requests that the Government provide information on any progress made in this regard.***

2. *Scope of application.* In its previous comments, the Committee noted that the Labour Code does not seem to apply to work done outside employment contracts. It requested that the Government provide information on the measures taken or envisaged to ensure that children working outside of a formal labour relationship, such as children working in the informal sector or on a self-employed basis, benefit from the protection provided by the Convention.

The Committee notes the Government's information in its report that the State Supervisory Service for Labour, Migration and Employment under the Ministry of Labour supervises and monitors compliance with labour legislation. The activities of the State Supervisory Service include monitoring of child labour in the formal and informal economy as well as children working on a self-employed basis. However, no information has been provided on the number of inspections carried out and the number of violations related to child labour detected by the State Supervisory Services in the informal economy. In this regard, the Committee notes from a report entitled *ILO–IPEC contributions to eliminate the worst forms of child labour in Tajikistan, 2005–15* (ILO–IPEC Report, 2015) that children in Tajikistan work in almost all sectors of industry, as well as in cotton, tobacco and rice plantations and in various services such as car washing, shoe cleaning and transportation of carriages in the markets. ***The Committee therefore requests that the Government take the necessary measures to strengthen the capacity and expand the reach of the State Supervisory Services so as to ensure appropriate monitoring of child labour in the informal economy and to guarantee the protection afforded by the Convention to children under the age of 16 years who are working in the informal economy. It also requests that the Government provide information on the number of inspections conducted by the State Supervisory Service in the informal economy as well as the number of violations detected with regard to the employment of children in this sector.***

Application of the Convention in practice. Following its previous comments, the Committee notes from the *Working children in the Republic of Tajikistan: The results of the child labour survey 2012-2013* (CLS report), issued on 17 February 2016, conducted in cooperation with ILO–IPEC, that of the 2.2 million children aged between 5 to 17 years in Tajikistan, 522,000 (26.9 per cent) are working, with an employment prevalence rate of 10.7 per cent among 5 to 11 year-olds and 30.2 per cent among 12 to 14 year olds. About 82.8 per cent of working children are employed in the agricultural sector, 4.4 per cent in wholesale and retail trade, and 3 per cent in manufacturing and construction. Of the total number of working children, 21.7 per cent are involved in hazardous work, including in agriculture, fishery and related works, forestry and related works, construction and street work. The CLS report also indicates that children more often combine schooling with unpaid household services and employment. However, the Committee also notes that the Committee on Economic, Social and Cultural Rights, in its concluding observations of March 2015, expressed concern at the large number of children, mostly from single-parent families and migrant worker families, who are involved in child labour, and that 13 per cent of them are working in dangerous conditions, while 10 per cent never attend school (E/C.12/TJK/CO/2-3, paragraph 24). The Committee must express its ***concern*** at the significant number of children working in the country, particularly in hazardous work. ***The Committee therefore strongly encourages the Government to strengthen its efforts to ensure the progressive elimination of child labour in the country. It requests that the Government provide information on the measures taken in this regard as well as the manner in which the Convention is applied in practice, including information on the number and nature of contraventions detected with regard to the employment of children below the minimum age as well as in hazardous work, and on the penalties applied.***

Noting the Government's intention to seek assistance from the ILO, the Committee encourages the Government to take the necessary measures to avail itself of ILO technical assistance, with a view to bringing its law and practice into conformity with the Convention.

The Committee is raising other matters in a request addressed directly to the Government.

The former Yugoslav Republic of Macedonia

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC), which concerned the operation of labour inspection and the length of judicial proceedings in cases of anti-union discrimination.

Article 4 of the Convention. Promotion of collective bargaining. The Committee welcomes the information provided by the Government concerning: (i) the launch of a project on the Promotion of Social Dialogue financed by the European Union, aiming to strengthen tripartite social dialogue, encourage collective bargaining and establish sectoral infrastructures for collective agreements, as well as operational mechanisms for the resolution of disputes; and (ii) the Government's review of the Law on Labour Relations, in particular as to collective bargaining, with the assistance of the Office and in consultation with the social partners, to ensure full compliance with ILO Conventions. ***The Committee requests the Government to report on the outcome of the project and review process for the promotion of collective bargaining, including as to any measures undertaken as a result.***

Collective bargaining in practice. The Committee notes the information provided by the Government as to the number of collective agreements concluded in the country. ***The Committee requests the Government to continue providing information on the application in practice of the Convention, including statistical data concerning the number of collective agreements concluded in both public and private sectors and the number of workers covered.***

C081 - Labour Inspection Convention, 1947 (No. 81)

The Committee notes the observations made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen), as well as the observation of the Turkish Confederation of Employers' Associations (TİSK), all received on 29 October 2015. The Committee also notes the additional observations made by the TİSK, transmitted with the Government's report. It also notes the observations of the Confederation of Public Employees' Trade Unions (KESK) communicated with the Government's report under the Occupational Safety and Health Convention, 1981 (No. 155).

The Committee notes the 2015 conclusions of the Committee on the Application of Standards (CAS) of the International Labour Conference on the application of Convention No. 155, which also relate to labour inspection, in particular concerning the need for an increased number of labour inspections in the area of occupational safety and health (OSH), more effective enforcement of dissuasive sanctions for labour law violations, and improved collection of statistics on the number of industrial accidents and occupational diseases.

Articles 3, 5(b), 10 and 16 of the Convention. Labour inspection and OSH, including in the mining sector and in relation to subcontracting situations. The Committee recalls from its previous comment that the number of inspection visits in the area of OSH had decreased from 19,469 to 11,533 OSH inspection visits between 2011 and 2012 and that several trade unions expressed concern at the insufficient coverage of workplaces by OSH inspections, the widespread non-compliance with preventive OSH requirements and the absence of dissuasive fines, as well as the high incidence of occupational accidents in subcontracting situations. Recalling the conclusions of the CAS in 2015 on the application of Convention No. 155 concerning the need to increase the number of labour inspections, the Committee notes from the statistical information provided by the Government in its reports under this Convention and Convention No. 155 that the total number of OSH inspections increased from 11,533 in 2012 to 14,174 in 2014, and 13,296 inspections in 2015 and that the number of labour inspections in the mining sector increased from 747 in 2012 to 1,391 in 2014 (according to the information in the 2015 annual labour inspection report, in the period from February to November 2015, 978 inspections were undertaken in the mining sector). It further notes the Government's indication that in 2014, 230 inspections concerning subcontractors and primary employers were undertaken and that this number was 96 in 2015 (concerning 14,913 workers). According to the information provided by the Government in its report under Convention No. 155, it is estimated that more than 19 million people fall within the scope of the OSH Law No. 6331.

The Committee notes that the TÜRK-İŞ, the Türkiye Kamu-Sen and the KESK continue to express concern about the high number of occupational accidents and diseases (including in the mining sector and in subcontracting situations), and that the TÜRK-İŞ calls for revised inspection plans in view of insufficient action to achieve safe working conditions, particularly in subcontracting situations. The Türkiye Kamu-Sen adds that there are almost 2.5 million workers in subcontracting situations and they are especially vulnerable because they are not in a sufficiently strong position to form trade unions. The Committee notes from the information provided by the Government in its report under Convention No. 155 that while the National OSH Policy Document and Action Plan for 2014–18 includes objectives around OSH inspections, no relevant action points are contained in that document. The Committee further notes the information provided by the Government in its report under this Convention that no tripartite agreement was achieved in relation to labour inspection and the monitoring of activities on OSH in mining. ***Noting the increase in the number of OSH inspections, including in the mining sector, the Committee requests that the Government provide disaggregated statistics on the number of workplaces and workers employed in the different sectors, in particular, in mining and subcontracting, so as to enable it to assess the coverage of workplaces by labour inspection. The Committee is also requested to provide detailed information on the number of OSH inspections undertaken in these workplaces, particularly in the mining sector and in subcontracting situations. The Committee also requests the Government to provide information on the number of industrial accidents and cases of occupational diseases in these workplaces. Noting the efforts made to focus on workplaces with a high incidence of occupational accidents such as those in the mining and the construction sectors, the Committee requests that the Government provide more information on the inspection approach and strategy adopted, including the criteria for determining the inspection objectives and whether these are developed in consultation with the social partners.***

Articles 5(a), 7, 17 and 18. Effective enforcement of laws and regulations providing for sufficiently dissuasive penalties. Effective cooperation between the inspection services and the judicial system. The Committee notes that in its 2015 conclusions, the CAS requested that the Government ensure that dissuasive sanctions are imposed for infractions of laws and regulations, in particular with respect to subcontractors. The Committee notes that while the Government has not provided specific information on measures taken to give effect to these conclusions, it welcomes the Government's information that there has been an increase in the fines for non-compliance with the legal obligations in the 2012 OSH Act No. 6331 (through amendments introduced by Act No. 6645 in 2015). Moreover, it notes that the Government provides the requested information on the number of infractions detected and penalties imposed.

Concerning advice and enforcement, the Committee notes the Government's indication that labour inspectors take a preventive approach during regular inspections, by primarily informing employers as to how to eliminate detected violations, rather than immediately initiating criminal proceedings. The TİSK reports the opposite situation, stating that labour inspectors have increasingly adopted an inflexible punitive approach, and calls for an increase in preventive activities, in conformity with the approach contained in the OSH Act No. 6331. The Committee further notes from the observations made by the KESK under Convention No. 155 that according to statements made by the Government, inspections in response to a complaint adopt a non-punitive and accommodating approach.

In this respect, the Committee emphasizes that an appropriate balance needs to be struck between the advisory functions of labour inspectors aimed at preventing occupational accidents and diseases, and sanctions, which remain an important element for effective labour law compliance. Highlighting the importance of the advisory functions of labour inspectors to make employers and workers aware of their rights and obligations, the Committee also recalls that the possibility of sanctions, where these are merited and warranted to deter future violations, constitutes an important component of any preventative strategy. ***The Committee requests that the Government provide specific information on the measures taken and the compliance strategy pursued to address the conclusions of the Conference Committee concerning the effective enforcement of dissuasive sanctions. In this regard, it requests that the Government provide information on the impact of the increased fines for OSH violations. The Government is also requested to provide detailed statistical information on the number of OSH infringements detected during inspection visits in general and in the mining and subcontracting sectors, the areas to which they relate and the corrective measures or penalties issued as a result (administrative fines, referral to the courts, convictions and acquittals, etc.).***

The Committee also once again requests that the Government provide information on any measures adopted or envisaged to promote effective cooperation between the labour inspection services and the justice system (such as the creation of a system for the recording of judicial decisions that is accessible to the labour inspectorate, training sessions, etc.) to provide for more effective enforcement in the area of OSH.

Articles 10 and 16. Number of labour inspectors, frequency and thoroughness of labour inspections. In its previous comment, the Committee noted that the total number of labour inspections had significantly decreased between 2010 and 2012 which, according to the Government, was the result of the introduction of a proactive inspection approach, which has caused each inspection to take more time. The Committee also noted the observations made by the TÜRK-İŞ and the Confederation of Progressive Trade Unions of Turkey (DİSK) that the number of labour inspectors was insufficient to ensure a deterrent effect through inspections and penalties. In this respect, the Committee noted an increase in the number of labour inspectors from 840 to 1,020 (between 2011 and 2013), as well as the information that new labour inspection posts had been approved and were in the process of being filled.

The Committee notes from the information provided in the 2015 annual report that in October 2015, there were a total of 974 labour inspectors (572 specializing in OSH, and 402 specializing in working conditions) of which 215 were women inspectors. The Committee notes that recruitment of an additional number of 61 labour inspectors is expected to be completed in 2016. The Committee notes from the Government's indications made in its report

under Convention No. 155 that it is proposed to increase the total number of labour inspectors to 1,216. The Committee also notes the observations made by the TÜRK-İŞ that labour inspections directed at detecting child labour are inadequate. ***The Committee requests that the Government provide information on the number of labour inspectors (including their specialization), as well as the number of vacant labour inspection posts and the progress made in filling these vacancies. It encourages the Government to ensure that the number of labour inspectors and inspections is sufficient to secure the effective application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. In this respect, it requests the Government to provide information on the total number of labour inspection visits from 2010. The Government is also requested to provide detailed information on the activities undertaken by the labour inspectorate to combat child labour.***

Article 14. Notification of industrial accidents and cases of occupational disease. The Committee notes the detailed information provided by the Government in reply to its previous request concerning the measures envisaged in the framework of the 2014–18 OSH Policy and Action Plan to improve the notification of occupational accidents and diseases. In this respect, it refers to its comments concerning the application of Article 11(c) of Convention No. 155.

The Committee is raising other matters in a request addressed directly to the Government.

C135 - Workers' Representatives Convention, 1971 (No. 135)

Observation 2016

The Committee notes the observations on the application of the Convention by the Turkish Confederation of Employers' Associations (TİSK), the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Public Employees Trade Unions (KESK) received in January 2016 and transmitted with the Government's report. The Committee notes the numerous allegations of violations of the Convention in practice submitted by the KESK, which refer, in particular, to the cases of dismissal, transfers and disciplinary measures, as well as denial of facilities to worker representatives and ***regrets*** the absence of any reply thereon in the Government's report. ***The Committee requests the Government to provide its comments on the observations made by TÜRK-İŞ and KESK.***

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK) and the Turkish Confederation of Employers' Associations (TİSK) communicated with the Government's report. The Committee also notes the Government's replies to the observations of KESK received on 7 September 2015, to the observations of the International Trade Union Confederation (ITUC) received on 14 September 2015, and to the observations of the International Organisation of Employers (IOE) received on 28 August 2015.

Articles 1 and 2 of the Convention. Scope of application. Exclusions. With reference to its previous comment concerning the exclusion of certain categories of workers from the application of the Occupational Safety and Health Act No. 6331 of 2012 (the OSH Act), the Committee notes the Government's indication that specific OSH provisions apply to the workers excluded, including: (a) sections 57 and 58 of the Turkish Armed Forces Domestic Service Law No. 211 of 1961, for military and law enforcement activities; (b) the Social Insurance and Universal Health Insurance Law No. 5510 for self-employed workers; (c) section 417 of the Law on Obligations No. 6898 for domestic workers; (d) several guidelines and regulations of the Ministry of Justice ensure health and safety for inmates, and section 4(1) of the Social Insurance and Universal Health Insurance Law No. 5510 is also applicable to prisoners. In reply to the Committee's request on the exclusion of specific branches of economic activity, the Government indicates that: (a) the Regulation on Health and Safety in the Use of Work Equipment (No. 28628 of 2013) applies to transportation vehicles used outside the workplace or inside transportation vehicles at the workplace; (b) the Regulation on OSH in Construction (No. 28786 of 2013) applies to construction or other temporary or mobile fields of work; (c) the Regulation on OSH in Mining Workplaces (No. 28770 of 2013) applies to mining; (d) the Regulation regarding Health and Safety Measures in Work Performed on Fishing Vessels (No. 28741 of 2013) applies to fishing vessels; and (e) Regulation No. 28710 on safety and health measures to be taken at the workplace building and its annexed facilities (No. 28710 of 2013) also applies to agricultural or forestry workplaces. The Committee also notes that KESK alleges a high rate of irregular employment in the country and an increase in the use of subcontracting in both the private and public sectors, and it raises concerns with regard to the application of the OSH Act to public sector workers, which has been delayed. ***The Committee requests the Government to provide its comments in this respect and to provide also further information on the measures taken to ensure the application in practice of the Convention to all workers.***

Article 4(2). Prevention of occupational accidents and injury to health as the aim of the national policy. In reply to its previous comments concerning the ineffectiveness of the measures adopted under the national policy framework for reducing occupational accidents and improving the identification of occupational diseases, the Committee notes the Government's indications that objective 2 of the National Policy Document III (2014–18) aims to develop occupational accident and disease statistics and a recording system. The Committee also notes that KESK calls on the Government to widen the definition of occupational disease and to adopt measures to prevent occupational diseases, particularly for public workers. In this regard, the Government indicates that in 2016 the National OSH Council convened a meeting with the participation of the social partners and specialist personnel from relevant institutions to assess and discuss the situation of radiology technicians in hospitals. The Committee further notes the observations of KESK that protective services are being neglected, that risk analyses are not being adequately carried out and that the number of occupational accidents is increasing. The Government indicates that the number of accidents has decreased since 1961, although the level of accidents is still too high and work is being carried out by the Directorate-General of OSH to achieve progress in this regard. ***The Committee requests the Government to provide detailed information on the progress made in the implementation of National Policy Document III with a view to preventing occupational accidents and diseases.***

Article 5(e). Protection of workers and their representatives. With reference to its previous comment concerning the protection of workers and their representatives from disciplinary measures as a result of actions properly taken in conformity with the OSH policy, the Committee notes that, pursuant to sections 18(3) and 20(4) of the OSH Act, workers and their representatives may not be placed at a disadvantage because of their OSH-related activities. The Committee takes note of this information.

Article 7. Periodic review of the situation regarding OSH overall and in respect of particular areas. With reference to its previous comment on the measures taken to review the OSH situation in high-risk sectors, the Committee notes that objective 3 of National Policy Document III aims to reduce the rate of occupational accidents in the metal, mining and construction sectors. The Government indicates that: (a) a project for the improvement of OSH targeting SMEs in these three sectors was conducted between 2010 and 2012; (b) consultancy services on OSH management systems, risk assessment health care services and occupational diseases were provided in 128 workplaces; (c) work is under way to prevent occupational accidents in the construction sector through the project "Safe scaffolds and safety on scaffolds". The Committee also notes KESK's observations that the establishment of a "lifeline" to ensure that workers in mines have a safe way to return above ground and of a Staff Tracking and Monitoring System have been postponed until 2017. The Government indicates that details regarding the lifeline have been regulated and that its application has been suspended to allow time to adjust to the change. The Committee also notes the concerns raised by KESK about risks to the health and safety of those working with radiation, particularly workers in public hospitals. In this regard, the Government indicates that in 2016 the National OSH Council convened a meeting with the participation of the social partners and specialist personnel from relevant institutions to assess and discuss the situation of radiology technicians in hospitals. ***The Committee requests the Government to continue providing information on the progress made in relation to the application of this Article of the Convention.***

Article 8. Measures to be adopted, including legislation, in consultation with the most representative organizations of employers and workers, to give effect to the national policy. In its previous comment, the Committee requested the Government to report on progress to enhance and strengthen tripartite social dialogue on OSH at the national level. The Committee notes the Government's indication that, in addition to the tripartite meetings of the National OSH Council, it discussed with the social partners the drafting of the OSH Act and the Regulation on OSH in Mining (No. 28770 of 2013) and that the social partners did not respond to its invitation to participate in meetings and tripartite acitivities. The Committee also notes TİSK's observations that, although during the drafting stage of the OSH Act social dialogue was open, when there has been disagreement, the short periods given to the social partners to make their views known have constituted an obstacle to effective consultations. ***The Committee requests the Government to continue providing information in this respect.***

Article 9. Adequate and appropriate system of inspection and adequate penalties. In its previous comment, the Committee noted the conclusions of the Conference Committee in 2015 concerning the need to increase the number of labour inspections and ensure that dissuasive sanctions are imposed for infractions of laws and regulations, in particular with respect to subcontractors. In this respect, it refers to its comments in its observation on the application of Articles 3, 5(b), 10 and 16 (in relation to subcontracting situations) and Articles 5(a), 7, 17 and 18 (on effective enforcement and dissuasive penalties) of the Labour Inspection Convention, 1947 (No. 81).

Article 11(c). Establishment and application of procedures for the notification of occupational accidents and diseases, and production of annual statistics on occupational accidents and diseases. With reference to its previous comment on the need to improve the collection and consolidation of statistical data on occupational accidents and diseases and to strengthen the procedures established for the notification of work-related accidents and diseases, the Committee notes the Government's indication that: (a) a project to identify more cases of occupational diseases was launched in 2010 and a Protocol was signed between the Ministry of Health and the Ministry of Labour and Social Security in this regard; (b) three ad hoc subcommittees were set up to pursue further work on adequately capturing incidents of occupational disease; (c) joint working groups were established with the participation of the Ministry of Labour and Social Security, the Ministry of Health, other agencies and the social partners to eliminate problems encountered in the notification of occupational accidents and diseases; (d) guidelines for diagnosis of occupational diseases were published by the Ministry of Labour and Social Security; and (e) occupational diseases notification guidelines have been published to provide guidance to employers, workplace physicians and health-care service providers. The Government further indicates that administrative fines under section 26 of the OSH Act apply in cases where an employer or health service provider fails to notify the competent authority of any incidents of occupational accidents and diseases. The Committee notes the observations made by KESK alleging discrepancies between the data provided by the Government and data obtained independently by the Worker Health and Industrial Safety Council, as well as under-reporting of occupational diseases of public workers. In this regard, the Committee notes that action 2.3 of National Policy Document III aims to include public workers

statistics of occupational accidents and diseases and that studies have been carried out by the Social Security Institution and General Directorate of OSH in this respect. The Committee draws the Government's attention to the useful indications contained in the Protocol of 2002 to the Convention concerning the process of recording and notification of occupational accidents and diseases. ***The Committee requests the Government to continue providing information on the application of Article 11(c) of the Convention.***

Articles 13 and 19(f). Right of workers to remove themselves from danger. In its previous comment, the Committee noted that the conditions set by section 13 of the OSH Act constitute a restriction on the right of workers to remove themselves from imminent and serious danger to their life or health. The Committee notes the Government's indication that it has taken measures to comply with this provision of the Convention and that pursuant to section 13 of the OSH Act workers have the right to remove themselves from serious and imminent danger deemed unavoidable in the worker's opinion, based on his/her knowledge and experience, without any disadvantage because of their action, in line with section 8(4) of the EU Directive 89/391/EEC, the OSH Framework Directive. ***The Committee requests the Government to provide additional information on any written measure adopted to clarify the meaning of section 13 of the OSH Act, and on any case of non-compliance identified by the labour inspection.***

Article 16. Employer's obligations. With reference to its previous comment on the roles and responsibilities for OSH of employers, the Committee notes the Government's indication that, pursuant to section 4(2) of the OSH Act, in cases where employers enlist competent external services or persons, this shall not discharge them from their responsibilities with regard to OSH. The Committee also notes the concerns raised by KESK regarding the attribution of responsibility for implementing OSH measures to employers in the public sector. In this regard, the Government indicates that, pursuant to section 2 of the OSH Act, the legislation applies to all work and workplaces in both the public and private sectors and to the employers of these workplaces, and that pursuant to section 3, the term "employer" is clearly defined. The Committee takes note of this information.

Article 17. Collaboration between two or more undertakings engaged in activities simultaneously at one workplace. The Committee notes the Government's indication in reply to its previous request concerning collaboration of several employers at one workplace that, pursuant to section 22 of the OSH Act, OSH committees must be composed jointly in establishments where there is a main employer and subcontractors. It adds that, pursuant to section 23 of the OSH Act, collaboration and cooperation in OSH activities when there are several employers is not subject to any period of time and that the six-month stand-down period referred to in section 22 of the OSH Act only applies to the establishment of occupational safety and health committees. Furthermore, section 14 of the Regulation on OSH risk assessment (No. 28512 of 2012) establishes that several employers must coordinate their risk assessment procedures at the same workplace. The Committee takes note of this information.

The Committee is raising other matters in a request addressed directly to the Government.

C158 - Termination of Employment Convention, 1982 (No. 158)

Observation 2016

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK), communicated together with the Government's report.

Article 2(3) of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time. The Committee recalls the concerns raised by the Confederation of Turkish Trade Unions (TÜRK-İS) in 2013 indicating that, although the Labour Code establishes clear provisions regulating the use of fixed-term employment contracts, in actual practice, such contracts are used to evade employers' statutory obligations. The Government indicates that employment contracts of an indefinite duration are the typical form that employment relationships take in Turkey. TİSK points out that specific objective reasons must exist at the outset when a fixed-term contract is agreed for the first time. Pursuant to section 11 of the Labour Law, the objective reasons include: jobs with a specified term, completion of a certain job, or the occurrence of a certain event. In the absence of objective reasons justifying the conclusion of a fixed-term employment contract, the contract is deemed to be concluded for an indefinite period. Moreover, according to section 11, a fixed-term employment contract may not be concluded more than once consecutively, unless reasons exist that necessitate the use of successive fixed-term contracts. Apart from this exception, a fixed-term contract that is concluded more than once is deemed to have been concluded for an indefinite period from the beginning. The Government indicates that Turkish courts often interpret the use of fixed-term contracts very strictly and only uphold the use of these contracts in exceptional situations. The Committee notes the examples of court decisions referred to by the Government in this context. According to TİSK, Turkish legislation considerably limits the possibility of concluding fixed-term employment contracts, adding that Turkish legislation is stricter than the principles applied in European Union Directive 99/70 EC since, in contrast to the Directive, Turkish law requires the objective reason justifying the use of a fixed term contract at the beginning of the employment relationship.

TİSK further indicates that since contracts are presumed to be for an indefinite duration, the burden of proof rests upon the party claiming that the employment contract is for a fixed term. In its previous comments, the Committee requested further information on the safeguards against abusive recourse to contracts of employment for a specified period of time, especially for subcontracting arrangements for auxiliary jobs. TİSK indicates that, while it is possible for auxiliary tasks in the workplace to be subcontracted out by the principal, subject to the restrictions set out in section 2 of the Labour Law, this does not mean that the employer can give preference to the use of fixed-term contracts to hire workers employed in auxiliary jobs. If the objective reasons required in the Labour Law have not been met, the employment contract will be deemed to be for an indefinite period from the outset. In addition, unskilled labourers are generally employed in auxiliary jobs. TİSK refers to a 2008 ruling of the Court of Cassation which construed an employment contract as being for an indefinite period because the objective reasons required for a fixed-term contract did not exist. The worker in that case was providing unskilled labour for the employer and occupied a position that required continuity. TİSK considers that it is not possible to use fixed-term contracts in auxiliary jobs, according to the relevant legislation and case law. ***The Committee requests the Government to continue to provide information on the application of safeguards provided in section 11 of the Labour Law against abusive recourse to contracts of employment for a specified period of time, including relevant court decisions in this regard. It also requests the Government to provide further information on the application in practice of section 11, including data on the total number of fixed-term employment contracts compared with contracts for an indefinite duration.***

Article 2(4)–(6). Categories of workers excluded from the Convention. The Committee recalls that section 18 of the Labour Law excludes from its employment protection provisions: workers employed in businesses employing less than 30 workers; workers with less than six months' employment; and workers in managerial positions. Notwithstanding this provision, section 17 of the Labour Law provides that if the contracts of these categories of workers are terminated in bad faith, they are entitled to compensation equal to three times the amount of wages they would have received during the notice period, plus compensation in lieu of notice if the notice period was not respected. The Government indicates that the Turkish Code of Obligations (No. 6098) also applies to workers who are excluded from the scope of the Labour Law. According to section 434 of the Code of Obligations, in cases where the service contract is terminated in bad faith, the employer is obliged to pay an indemnity to the worker equal to three times the amount of wages due during the period of notice of termination. In its observations, TİSK refers to court decisions examining the issue of bad faith dismissals. It adds that workers excluded from the scope of the protections in the Labour Law may nevertheless benefit from the labour safeguards in collective labour agreements. TİSK also indicates that there are provisions in many collective labour agreements that provide safeguards applicable to those employed in workplaces with fewer than 30 workers. The Committee notes the data provided by the Government indicating that the number of insured employees in workplaces with fewer than 30 workers totalled 6,131,494 in 2011 (51.35 per cent of all workers) and 6,493,090 (49.60 per cent of all workers) in 2015. ***The Committee requests the Government to continue to provide updated information on the application of the Convention in small and medium-sized enterprises that may be excluded from the employment protection provisions of the Labour Law, including statistical data on the number of establishments employing fewer than 30 workers in comparison with other establishments, and examples of court decisions that have examined allegations of bad faith dismissals. Please also provide copies of collective agreements that extend protection afforded by the labour legislation to workers employed in workplaces with fewer than 30 workers. The Committee also requests the Government to provide further information on the number of non-insured workers and the manner in which Article 12 of the Convention would apply to such workers.***

Articles 4 and 5. Valid reasons for termination. The Committee notes the joint statement of the European Trade Union Confederation (ETUC), International Trade Union Confederation (ITUC), Confederation of Turkish Trade Unions (TÜRK-İS), Confederation of Turkish Real Trade Unions (HAK-IS), Confederation of Progressive Trade Unions of Turkey (DISK) and Confederation of Public Employees' Trade Unions (KESK), referring to a "massive wave of dismissals" in Turkey by the Government since July 2016, primarily in the public sector, and to a meeting in October 2016, with representatives of the ILO. The Committee recalls that *Article 4* of the Convention provides that the employment of a worker shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. ***The Committee requests the Government to provide detailed information in this regard by providing information on the practical effect given to Articles 4 and 5 of the Convention in relation to the reported "massive wave of dismissals" that has taken place since July 2016.***

The Committee is raising other matters in a request addressed directly to the Government.

Turkey

C161 - Occupational Health Services Convention, 1985 (No. 161)

Observation 2016

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK), the Confederation of Turkish Real Trade Unions (HAK-İŞ), the Confederation of Turkish Trade Unions (TÜRK-İŞ), and the Turkish Confederation of Employers' Associations (TİSK), communicated with the Government's report. The Committee further notes the responses of the Government to the observations of KESK, received on 7 September 2015, and to the observations of the All Municipality Workers Trade Union (TUM YEREL SEN), received on 30 October 2014. The Committee also notes the observations made by KESK, communicated with the Government's 2016 report on the Occupational Safety and Health Convention, 1981 (No. 155), which are relevant to the application of Convention No. 161.

Article 2 of the Convention. Formulation, implementation and periodic review of a coherent national policy on occupational health services. With reference to its previous request for information on the formulation, implementation and periodic review of a national policy, the Committee notes the Government's indication that the 2014–18 National Policy Document III and the Action Plan on Safety and Health at Work have been issued. The Committee notes that the Policy contains several references to the desirable improved performance of occupational health services. The Committee however notes KESK's observations that many decisions in the previous National Action Plans have not been implemented, for example with regard to the rate of occupational accidents. ***The Committee requests the Government to provide its comments in this respect.***

Article 3. Progressive development of occupational health services for all workers and all branches of economic activity. In its previous comment, the Committee noted the insufficient information regarding the establishment of occupational health services and the branches of economic activity they cover. In this regard, the Committee welcomes the Government's indication that as of 1 July 2016 there is an obligation for the assignment of an occupational health and safety physician and specialist in all workplaces without any limitation as to the number of employees, sector and class of danger, including the public sector. The Committee notes however KESK's observations that there are not enough occupational safety experts and workplace physicians in the public sector and that 33 per cent of workers are employed in the informal sector and 2 million workers are subcontracted. Furthermore, TİSK observes problems implementing the OSH Act in the public and agricultural sectors. In this regard, the Committee notes that objective 4 of the National Policy Document III provides for increasing activities that aim to develop OSH in the public and agricultural sectors. ***The Committee requests the Government to provide its comments in this respect.***

Article 4. Consultations with the most representative organizations of employers and workers. With reference to its previous request for information on the consultations held regarding national policy, the Committee notes the Government's indication that several meetings have been held within the National OSH Council. The Committee further notes HAK-İŞ' observations indicating that measures have not been taken to strengthen the functions of the National OSH Council and increase its efficiency. KESK observes that laws are not always prepared in consultation with the social partners, and that the social partners are allowed only very limited time to put forward their views during parliamentary committee sessions. TİSK refers to the need to provide the social partners with adequate time to develop their views for consultation on legislative changes. ***The Committee requests the Government to provide its comments in this respect.***

Articles 5 and 7. Functions of occupational health services. Organization of occupational health services. With reference to its previous comment concerning the organization of occupational health services and their functions, the Committee notes the information provided by the Government on the recent amendments to the OSH Act by Act No. 6645/2015 that reinforce the duties and functions of occupational health services, including their role in providing guidance and consultancy services to employers. Pursuant to section 9 of the OSH Act, workplaces are separated into hazard classes and occupational services are organized accordingly. The Government further indicates that several specific regulations have been enacted to regulate the qualification, recruitment, assignment, duties and performance of occupational physicians, occupational safety specialists and other health-care personnel. The Committee notes the observations made by HAK-İŞ regarding the positive steps taken by the Government on the application of the Convention, and in particular the amendments to the OSH Act by Act No. 6645, as well as other statutes and decrees that have entered into force. The Committee notes this information.

The Committee is raising other matters in a request addressed directly to the Government.

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the detailed discussion which took place in the Conference Committee on the Application of Standards in June 2016, concerning the application by Turkmenistan of the Convention. The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, and the observations of the International Trade Union Confederation (ITUC), received on 31 August 2016, as well as the Government's reports, received on 5 September 2016 and 10 November 2016. Lastly, it notes the report of the Technical Advisory Mission of the ILO to Turkmenistan that took place from 26 to 29 September 2016.

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for the purposes of economic development. In its previous comments, the Committee noted that, in accordance with section 7 of the Law on the legal regime governing emergencies of 1990, in order to mobilize labour for the needs of economic development and to prevent emergencies, state and government authorities may recruit citizens to work in enterprises, institutions and organizations. The Committee considered that the notion of "needs of economic development" did not seem to satisfy the definition of "emergency" referred to in the Forced Labour Convention, 1930 (No. 29), and was therefore incompatible with both Article 2(2)(d) of Convention No. 29 and *Article 1(b)* of Convention No. 105. The Committee also noted the Government's indication that the State of Emergency Act, the Emergency Response Act and the Law on preparation for and carrying out of mobilization in Turkmenistan do not mention the concept of "purposes of economic development", but that citizens may be employed in undertakings, organizations and institutions during mobilization in order to ensure that the country's economy continues to function and to produce goods and services that are essential to satisfy the needs of the State, the armed forces and the population, in case of emergency. Moreover, section 19 of the Labour Code provides that an employer may require a worker to undertake work which is not associated with his or her employment in cases specified by law.

The Committee also noted the ITUC's allegations that tens of thousands of adults from the public and private sectors were forced to pick cotton, and farmers were forced to fulfil state-established cotton production quotas, all under threat of a penalty. According to the ITUC, the President issued cotton production orders every year to regional governors, who face dismissal if they fail to meet the quotas. The governors assign responsibilities to district and city officials who, in turn issue orders to school administrators, other public institutions and businesses. Under the applicable legislation, the Government dictates the use of the land through farmers' associations, which may take away a farmer's right for "irrational and inappropriate use" of the land. Reporting to the President, the regional governors oversee the farmers' associations, which manage farmers, and local-level officials, who mobilize other citizens to harvest cotton. The ITUC further alleged that state-owned companies also maintained monopolies over cotton production. According to the ITUC, the Government forced public sector workers, including teachers, doctors, nurses and the staff of government offices, to pick cotton, pay a fine or hire a replacement worker, under threat of losing their jobs, having work-hours cut or salary deductions. The Committee further noted that, according to the ITUC, for the 2014 cotton harvest, the Government also forced businesses from the private sector to contribute workers to pick cotton. Local authorities decided to limit the operating time for all markets and grocery stores, thus forcing owners of small businesses to close their store and pick cotton, while having to provide a form signed by the farmer as proof of their work in the cotton fields. Private bus owners were allegedly forced to contribute by transporting forced labourers to the cotton fields, without any compensation and under threat of confiscation of their licences by the police.

The Committee notes that, in its conclusions adopted in June 2016, the Conference Committee urged the Government: (i) to take effective measures, in law and in practice, to ensure that no one, including farmers and public and private sector workers, is forced to work for the state-sponsored cotton harvest, and threatened punishment for the lack of fulfilment of production quotas under the pretext of "needs of economic development"; (ii) to repeal section 7 of the Law on the Legal Regime Governing Emergencies of 1990; and (iii) to seek technical assistance from the ILO in order to comply with the Convention in law and in practice and to develop a national action plan to eliminate forced labour in connection with the state-sponsored cotton harvest.

The Committee notes that the IOE, in its observations, expressed high concern at the reported practices of forced labour in cotton production which affect farmers, businesses and private and public sector workers, under threat of punishment for the lack of fulfilment of production quotas. The IOE states that the Government of Turkmenistan should seek technical assistance of the ILO and, together with the national social partners, should develop a national action plan to eliminate forced labour in connection with the state-sponsored cotton harvest.

The Committee also notes the observations made by the ITUC, which highlight the recent practices of forced mobilization by the Government of employees of a wide range of private and public sector institutions to pick cotton, including education and health-care institutions, municipal government offices, libraries, museums, meteorological agencies, cultural centres, sports organizations, utility, manufacturing, construction, telecommunications and fishing companies. Moreover, government-led forced labour of parents to fulfil harvest quotas also resulted in children picking cotton alongside their parents. The ITUC alleges that the Government has treated refusal to contribute to the cotton harvest as insubordination, incitement to sabotage, lack of patriotism and even contempt of the homeland. Those who have refused faced administrative penalties, including public censure, docked pay and termination of employment.

The Committee notes the Government's statement in its report that, in certain regions of the country, local government and agricultural producers, together with local employment services, organize voluntary recruitment from among those registered with such bodies as seeking employment, during the seasonal cotton harvest. The Government states that in this way seasonal employment is provided to that sector of the population. The Committee also notes the Government's information that it is paying more attention to developing and improving the recruitment conditions in the agricultural sector by introducing modern technological innovations, and sustaining farms and small and medium-sized businesses. The Government, further referring to the inspections carried out by the trade union bodies in 2015 and 2016, indicates that no complaints or statements about the use of forced labour during the cotton harvest have been made by any citizens. The Committee finally notes the Government's information that the new version of the Constitution (the Basic Law) adopted on 14 September 2016 recognizes the right of a person to work, to choose the type and place of employment and to work in healthy and safe working conditions (article 49). Moreover, it prohibits forced labour and the worst forms of child labour and also provides for the institution of the Human Rights Commissioner.

The Committee further notes from the ILO mission report that although representatives of international organizations and foreign embassies that the mission met with, indicated that the practice of forced labour existed, in most cases they did not have direct proof of this as it was difficult to access the cotton fields. The report also reflects the statements made by the same stakeholders that there were no reports of child labour in the cotton harvest. The mission report indicated a clear political will on the part of the Government to deal with and resolve the issue of forced labour in cotton harvesting. In this regard, the mission report took note of the various national strategies and action plans developed by the Government, including the National Human Rights Action Plan (2016–20); the National Action Plan to Combat Trafficking in Persons (2016–18); the UN Partnership Framework for Development signed in April 2016; and the Sustainable Development Goals (SDGs) adopted in September 2016. The mission considered that both the UN Partnership Framework Agreement, whose outcome 7 refers to employment as well as SDG Goal 8, target 8.7, which relates directly to the elimination of forced and child labour, provide a clear entry point for ILO technical assistance, especially since these newly adopted instruments would require concrete measures to be taken by the Government for their implementation.

The Committee welcomes the legal and policy measures and initiatives taken by the Government, including the adoption of national strategies, action plans as well as the SDGs. It also takes due note of the political will demonstrated by the Government to address the issue of forced labour in cotton harvesting in the country, including through its acceptance to receive an ILO technical advisory mission to examine the issues raised by the Committee and the Conference Committee on the Application of Standards. Moreover, the Committee notes from the ILO mission report that although the representatives of all ministries and the social partners denied that there was coercion exercised on persons who engaged in cotton harvesting, they indicated that concrete measures needed to be taken to prevent the occurrence of this phenomenon. ***In this regard, noting the Government's indication to the members of the Technical Advisory Mission of its willingness to avail itself of ILO technical assistance, the Committee urges the Government to continue to collaborate with the ILO on a***

broader basis by seeking ILO technical assistance with a view to eliminating, in law and in practice, forced labour in connection with the state-sponsored cotton harvesting, within the framework of a national action plan to eliminate forced labour or to improve recruitment and working conditions in the cotton sector. The Committee requests the Government to provide updated information on the measures taken in this regard as well as any other measures taken to ensure the complete elimination of the use of compulsory labour of farmers, public and private sector workers in cotton farming, and the concrete results achieved, with an indication of the sanctions applied.

The Committee is raising other matters in a request addressed directly to the Government.

Ukraine

C029 - Forced Labour Convention, 1930 (No. 29)

Observation 2016

Article 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. *Prevention and law enforcement.* The Committee previously noted the adoption of the Law on Combating Trafficking in Human Beings in 2011 and requested information on its implementation. The Committee also requested the Government to provide information on the number of convictions under section 149 of the Criminal Code and on the specific penalties applied.

The Committee takes note of the statistics provided in the Government's report and notes that, since 2013, the investigative agencies carried out pretrial investigations for 307 offences under section 149 on trafficking in human beings of the Criminal Code. The Committee notes that pretrial investigations were completed in 153 offences, of which it was decided to refer 82 offences to court, accompanied by indictments. The Committee also notes that, from 2013 to 2016, 1,500 pretrial investigations were carried out under section 302 of the Criminal Code on the establishment or maintenance of brothels and procurement and 1,000 pretrial investigations were carried out under section 303 of the Criminal Code on pimping or involvement of another in prostitution. As of 1 April 2016, the Committee notes that the National Police had documented 36 offences under section 149 of the Criminal Code. During pretrial investigations, the Committee notes that offenders may be held in pretrial detention as a precautionary measure. The Committee takes note of the Government's indication that, with a view to implementing the Trafficking in Human Beings Act, officers took part in different activities in 2016, such as workshops, a professional development course, a regional seminar and the opening workshop of the courts, all related to combating trafficking in persons. The Committee also notes that the focus of evaluation of police performance in combating trafficking in persons has shifted from the quantitative indicator of the number of offences recorded to the quality of pretrial investigations and prosecutions of traffickers. Such a shift makes identification of victims easier and allows essential assistance to a greater number of them. The Committee notes the Government's indication that one of the main objectives of the law enforcement agencies is not only to bring guilty parties to justice but also to protect victims' and witnesses' rights.

The Committee further takes note of the report published on 19 September 2014 by the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation by Ukraine of the Council of Europe Convention on Action against Trafficking in Human Beings. While noting the legal and policy framework put in place by the Government, the GRETA stresses the importance of taking additional measures such as training on trafficking in persons and on the rights of victims for all relevant professionals, as well as the development of a comprehensive and coherent statistical system on trafficking in persons (paragraphs 76 and 81).

Furthermore, the Committee takes note of the new National Action Plan for 2016–20 on Combating Trafficking in Human Beings, which was adopted in February 2016. In particular, the Committee notes that the National Action Plan will ensure the implementation of a comprehensive national policy on combating trafficking in human beings, increase the efficiency of central and local executive authorities and raise public awareness on issues connected to trafficking and assistance to victims. ***The Committee welcomes this information and encourages the Government to pursue its efforts to ensure that the Law on Combating Trafficking in Human Beings of 2011 is effectively enforced. The Committee requests the Government to take additional measures regarding prevention and coordination of action on combating trafficking in persons as well as prosecution, including strengthening the capacity of law enforcement bodies to better identify victims. The Committee also requests the Government to continue to provide statistical data on the number of prosecutions, victims identified, convictions and penalties imposed. Please, also provide a copy of the National Action Plan for 2016–20 as well as information on its objectives and on the measures taken for its implementation.***

2. *Protection and assistance for victims.* The Committee previously noted that the Government approved systematic recommendations for providing social services to victims of trafficking in persons and that this new approach involved new non-governmental and international organizations in assisting and protecting victims. Moreover, the Committee noted the 21 social and psychological help centres which can provide comprehensive emergency assistance to facilitate the recovery of victims. The Committee requested the Government to pursue its efforts to identify victims of trafficking and to ensure that all such victims are supported with appropriate protection and assistance as provided for under the Law of 2011.

The Committee notes the Government's indication that a system for combating trafficking in persons and providing assistance to victims has been set up in application of the Law on Combating Trafficking in Human Beings. Thus, the national coordination mechanisms for anti-trafficking bodies involve actors such as the Ministry of Social Policy, the National Police and the Ministry of Foreign Affairs. The Government also indicates that assistance must be provided not only to Ukrainian nationals but also to foreigners and that the status of victims of trafficking in persons involve medical, psychological and legal aid. According to the Government, the Ministry of Social Policy works constantly to improve the process of identifying victims of trafficking in persons and in cooperation with the International Organization for Migration (IOM) mission in Ukraine, the Ministry organized a national information campaign that started on December 2014. The Committee notes that as of 9 June 2016, the Ministry of Social Policy had recognized 212 individuals as victims of trafficking: 127 cases of labour exploitation, 34 of sexual exploitation, 35 cases of involvement in begging and five cases with a mixture of types of exploitation. The Committee takes note of the two projects conducted in collaboration with the IOM Mission in Ukraine which consist of analysing and drafting amendments to improve primary and secondary legislation on trafficking in persons, monitoring the implementation of measures to counter trafficking in persons and developing an electronic interactive training course for civil servants.

The Committee further notes that, while welcoming the measures taken by the Government on the protection and assistance of victims, the GRETA underlines the need to allocate the necessary human and financial resources and the quality of the services delivered by all services providers. The Committee also notes that the GRETA stresses the importance of adopting provisions on non-punishment of victims of trafficking in persons for their involvement in unlawful activities, to the extent that they were compelled to do so. Furthermore, the Committee notes the situation analysis of June 2016 by the IOM on human trafficking and its comments on the successful efforts of the Ministry of Social Policy to enhance victim identification. ***Noting the efforts made to provide protection and assistance to victims of trafficking in persons, the Committee requests the Government to continue to take measures in this regard and to provide information on the implementation of the National Action Plan for 2016–20, particularly regarding the measures taken to provide assistance to victims. It also requests the Government to provide information on the number of persons benefiting from these services.***

3. *Vulnerability of displaced people to trafficking in persons.* The Committee notes the indication in the report of the United Nations Special Rapporteur on the human rights of internally displaced persons of 2 April 2015 that the number of internally displaced persons had dramatically increased since early June 2014 (A/HRC/29/34/Add.3, paragraph 7). The Committee also notes that according to the Situation Analysis of June 2016 on human trafficking in Ukraine, the IOM reports that internally displaced people are targeted by unscrupulous intermediaries who offer brokerage services for emigration and receiving refugee status abroad. The Committee notes that in 2015 and 2016, 19 cases of trafficking of internally displaced persons have been recorded by the IOM. The Committee observes that the situation in the non-governmental controlled territory remains of high concern. ***While acknowledging the difficult situation prevailing in the country, the Committee requests the Government to take the necessary measures to ensure that internally displaced persons, placed in a vulnerable situation, do not become victims of trafficking in persons.***

The Committee is also raising other matters in a request addressed directly to Government.

Ukraine

C081 - Labour Inspection Convention, 1947 (No. 81)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

Technical assistance with a view to strengthening the labour inspection services. The Committee notes with ***interest*** that the Government requested ILO technical assistance for support in undertaking its labour inspection reforms initiated in 2014. The Committee notes that, as a result of this request made in February 2015, the ILO has, among other technical activities, established a needs assessment of the current structure of the State Labour Service (SLS) in November 2015 (2015 ILO needs assessment). This makes a number of recommendations on how to improve the effective functioning of the SLS, applying international labour standards and using best practices as a reference. The Committee also notes the information provided by the Government in its report on the initiation of the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" in September 2016 which aims to improve the national legal framework as well as compliance mechanisms, including through the revision of the Regulations of the SLS, the organization of the labour inspection, and the collaboration with the social partners. ***The Committee requests that the Government provide information on the activities undertaken in the framework of the technical assistance provided and the measures taken to strengthen the labour inspection services in relation to the principles of the Convention.***

Articles 12(1)(a) and (b), 15(c) and 16 of Convention No. 81 and Articles 16(1)(a) and (b), 20(c) and 21 of Convention No. 129. Restrictions and limitations to labour inspection. Further to the Committee's reiterated request to amend Act No. 877-V of 2007 concerning the fundamental principles of state supervision and monitoring of economic activity, so as to bring it into conformity with the abovementioned Articles of the labour inspection Conventions, the Committee welcomes the Government's indication that further to amendments in 2014, Act No. 877-V of 2007 no longer applies to the activities in the area of labour and employment legislation by the State Labour Inspectorate.

The Committee notes however with ***deep concern*** the information provided by the Government in its report on the moratorium introduced between January and June 2015 on labour inspections (pursuant to the Concluding Provisions of Act No. 76 VIII of 28 December 2014 on the repeal of several legislative acts), as a result of which there was a significant rise in the number of complaints made to the SLS concerning labour law violations. In this respect the Committee notes with ***concern*** that the number of labour inspections between 2011 and 2014 decreased from 42,323 to 21,015 and that in 2015, only 2,704 labour inspection visits were undertaken. The Committee further notes with ***concern*** the information provided by the Government that two Bills have recently passed the first reading in the Parliament of Ukraine, namely Bill No. 2418a of 21 July 2015 and Bill No. 3153 of 18 September 2015, which propose to place a fresh moratorium on scheduled inspection visits until 31 December 2016 and thereby restrict state oversight and monitoring of labour law. However, the Committee also notes that an ILO delegation was invited by the Government in the context of a technical mission to Kyiv in October 2016 to attend a hearing in Parliament on the proposed amendments to the Labour Code, which are supposedly intended to bring the Labour Code into conformity with the principles of the Conventions. In this context, the Committee welcomes the fact that, following the mission, the Government has requested informal opinions in relation to three legislative drafts, including on the procedures and regulations concerning labour inspection in the area of working conditions, occupational safety and health and mining. ***Recalling that a moratorium placed on labour inspection is contrary to the principles of the Convention, the Committee urges the Government to ensure that the proposed amendments to the national legal framework are undertaken with the purpose of bringing the national legislation into conformity with the Conventions and do not introduce restrictions and limitations on labour inspection. The Committee strongly encourages the Government to continue to avail itself of ILO technical assistance for this purpose.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

Ukraine

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2014, 1 September 2015 and 1 September 2016, as well as the observations of the Federation of Trade Unions of Ukraine received on 1 September 2015 and the Government's replies thereon. It further notes the observations of the International Organisation of Employers (IOE) received on 1 September and 27 November 2013, and 1 September 2015, which are of a general nature. The Committee also notes the observations of the Federation of Employers of Ukraine (FEU) received on 1 September 2015 and the Government's reply thereon.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee recalls that it had previously requested the Government to take the necessary measures to ensure the right of judges to establish organizations of their own choosing to further and defend the interests of their members. The Committee notes the Government's indication that by virtue of article 127 of the Constitution, professional judges cannot be members of trade unions. To remedy this situation and to ensure judges' right to organize, the Ministry of Social Policy addressed the President of the country on 17 November 2014, as well as the Verkhovna Rada on 15 June 2015, with a request to take into account the observations of the Committee and lift the constitutional restriction. The Committee notes that according to the Government, the Presidential Administration sent a corresponding proposal to the members of the working group on justice and related institutions of the Constitutional Commission for consideration. ***The Committee requests the Government to provide information on the developments in this regard.***

Right to establish organizations without previous authorization. The Committee further recalls that it had previously requested the Government to amend section 87 of the Civil Code, according to which, an organization acquires its rights of legal personality from the moment of its registration, so as to eliminate the contradiction with section 16 of the Law on Trade Unions providing that a trade union acquires the rights of a legal person from the moment of the approval of its statute and that a legalizing authority confirms the status of a trade union and no longer has a discretionary power to refuse to legalize a trade union. The Committee notes that according to the Government, in view of the clear wording of section 16 of the Law on Trade Unions, and taking into account the fact that a registering authority cannot deny registration to a trade union, registration is not the legal act upon which a trade union acquires active legal capacity; rather the adoption of a trade union's by-laws is considered to be such legal act. The Committee further notes the entry into force of the Law on the state registration of legal entities, individual entrepreneurs and public formations (2016). Pursuant to its section 3(2), particular arrangements for the state registration can be provided by other laws. The Government indicates that this is the case for trade unions, which are registered pursuant to section 16 of the Law on Trade Unions.

Article 3. Right to organize activities and formulate their programmes in full freedom. With regard to the Committee's previous request to take the necessary measures to amend section 19 of the Law on the procedure for settlement of collective labour disputes, which provides that a decision to call a strike has to be supported by a majority of the workers or two-thirds of the delegates of a conference, the Committee welcomed the Government's indication that the draft Labour Code would lower this requirement so as to set it at the majority of workers (delegates) present at the meeting (conference). The Committee notes the Government's indication that the latest version of the draft Labour Code does not contain provisions dealing with the manner in which the decisions to declare a strike are taken, and strikes are carried out. ***While expressing the hope that the Labour Code will be adopted in the near future and encouraging the Government to continue its cooperation with the Office in this respect, the Committee requests the Government to clarify which legal provision will govern the exercise of the right to strike once the Labour Code is adopted.***

The Committee had previously requested the Government to list specific categories of public servants whose right to strike is restricted or prohibited. The Committee notes the entry into force of the new Law on Civil Service. The Committee understands that pursuant to section 6(2) of the Law, there are three categories of civil servants; that categories A and B appear to be civil servants who exercise authority in the name of the State, whereas category V comprises "all other civil servants"; and that pursuant to section 10(5) of the Law, civil servants are prohibited from exercising the right to strike. ***Recalling that the right to strike in the public service may be restricted or even prohibited only for public servants exercising authority in the name of the State, the Committee requests the Government to provide concrete examples of public servants falling into category V.***

The Committee notes the general information provided by the Government on the application of section 293 of the Criminal Code, according to which, organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 monthly minimum wages or imprisonment for a term of up to six months. ***The Committee requests the Government to provide further information in this respect and in particular on the practical application of this section in respect of industrial actions.***

Ukraine

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

Observation 2016

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that under section 185-1 of the Code on Administrative Offences, a second breach (within a year) of the rules governing the organization and conduct of public meetings, street marches and demonstrations may be punishable with correctional labour for a term of up to two months. The Committee requested the Government to take the necessary measures to ensure that any legislation adopted regulating public assemblies does not contain penalties involving compulsory labour for activities protected by *Article 1(a)* of the Convention. The Committee also requested the Government to provide information on the progress made towards the adoption of the draft Law on Freedom of Peaceful Assembly, as well as information on the penalties applied to persons who have committed offences under section 189-1 of the Code on Administrative Offences. It requested the Government to indicate in particular if any persons sentenced under this provision have been sanctioned to correctional work.

The Committee notes the Government's indication in its report that the exercise of the right to peaceful assemblies may be restricted in accordance with the law and solely in the interest of national security and public order. However, the Government states that the requirements for the organization and conduct of peaceful assemblies, the time frame for providing advance notice to government or local authorities, as well as the positive duties of the State with regard to safeguarding the holding of peaceful assemblies, have not yet been set out in law. The Committee also notes the Government's indication that both Freedom of Peaceful Assembly Bill No. 3587 of 7 December 2015 and Freedom of Peaceful Assembly Bill No. 3587-1 of 11 December 2015 have been tabled for consideration at the Verkhovna Rada (Parliament). Firstly, these Bills propose to define the rights and duties of organizers of and participants in peaceful assemblies and the legal powers and duties of state and local authorities with regard to the organization and conduct of peaceful assemblies. Secondly, they propose to lay out clearly the sole grounds for and means of restricting freedom of peaceful assembly. Lastly, they set forth monitoring and mediation procedures to be used during these peaceful assemblies. The Committee notes that Decision 974 VIII of the Parliament of 3 February 2016 placed these Bills on the agenda of the fourth sitting of the Parliament's eighth session. The Government indicates that Freedom of Peaceful Assembly Bill No. 3587 proposes to amend the first and second paragraphs of section 185-1 of the Code on Administrative Offences and that Freedom of Peaceful Assembly Bill No. 3587-1 proposes to delete the entire same section. The Government indicates that those propositions aim to prevent politically motivated prohibitions of assemblies by the judiciary and arrests of protestors.

With reference to paragraph 302 of its 2012 General Survey on the fundamental Conventions, the Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The range of activities, which must be protected under this provision from punishment involving forced or compulsory labour, thus comprises the freedom to express political or ideological views as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion.

Noting the Government's indication that section 185-1 of the Code on Administrative Offences may be either amended or repealed, the Committee reiterates its hope that during the legislative process, the Government will take into account the comments of the Committee with a view to ensuring that no sanctions involving compulsory labour may be imposed as a punishment on persons exercising their right to assemble peacefully. The Committee requests the Government to provide information, in its next report, on the amendment or repeal of section 185-1 of the Code on Administrative Offences. Pending the adoption of these Bills, the Committee requests the Government to continue to provide information on the application in practice of section 185-1 of the Code on Administrative Offences, including the facts on the basis of which the persons have been prosecuted.

The Committee is also raising other matters in a request addressed directly to Government.

Ukraine

C122 - Employment Policy Convention, 1964 (No. 122)

Observation 2016

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Government indicates in its report that, due to the acute political and socio-economic situation in the country, labour market indicators deteriorated significantly in 2014–15. According to information available from the Ukraine State Statistics Service, GDP declined by 6.8 per cent in 2014 and by 17.2 per cent in the first quarter of 2015. As a result, the unemployment rate rose from 7.6 per cent in the first quarter of 2014 to 9.6 per cent one year later, representing an increase of 22.3 per cent compared to 2013. It is estimated that 2 million jobs have been lost since the start of the crisis. The Committee observes that, in 2014, the average number of unemployed among the working age population was 1.8 million, and the unemployment rate among youth between 15–25 years of age remained twice as high as the national average unemployment rate for adults. The Government indicates that there were 443,900 registered unemployed people at the end of June 2015, whereas there were only 43,600 job vacancies posted by employers at the State Employment Service (SES) during the same time period. The Committee notes that demographic challenges faced by the country include a rapidly aging population, migration and internal displacement of the population. Rising unemployment rates throughout the country poses additional constraints on internally displaced persons seeking work in other regions. The Committee also notes that occupational segregation by gender remains strong and that the demand for highly-qualified workers remains low. Against this background, current policies and action plans on employment approved by the President and the Cabinet of Ministers aim to promote productive labour and full and freely chosen employment. The 2016 Government's action plan seeks to anticipate labour market demands, address skill gaps for longer-term labour market inclusion and modernize vocational education and training services. The Committee notes that the Government has initiated a reform of the SES in order to transform it into a Public Employment Agency with the objective of streamlining some functions, improving labour market information and expanding its services to all jobseekers (not only the unemployed). The corresponding draft legislation has been the subject of tripartite consultation but has not yet been adopted. The Committee notes with ***interest*** the fourth Decent Work Country Programme of Ukraine (2016–19), which continues the cooperation between the ILO and Ukraine to promote decent work as a key to national development. ***The Committee requests the Government to provide information on how the measures adopted in the Government's action plan have translated into the generation of productive and lasting employment opportunities for the unemployed and categories of vulnerable workers. Please also include information on the impact of the measures taken to increase the participation of women, young people, older workers and persons with disabilities in the labour market. The Government is also requested to provide a copy of the law in connection with the SES reform when adopted.***

Coordination of education and training programmes with employment policy. The Committee notes the detailed information on the vocational training programmes provided by the SES. In 2014, vocational guidance services were provided to approximately 3.6 million people, including 1 million people under 35 years of age, of whom 636,700 were unemployed. In addition, 1.2 million people studying in educational institutions of various types received vocational guidance services. The Committee also observes that in 2014, some 202,200 people registered as unemployed underwent vocational training, and the level of employment after training was 92.1 per cent. The Committee notes that the 2016 Government's action plan highlights the need to modernize professional (vocational) education in accordance with the real needs of the economy, regional labour markets and the demands of society. The plan also indicates that a draft law on "Professional Education" has been recently elaborated. ***The Committee requests the Government to provide information on the impact of specific measures taken in connection with the 2016 Government's action plan to improve the coordination of education and training programmes with employment policies. Please also provide information on other initiatives undertaken in collaboration with the social partners in promoting the return of unemployed persons to productive employment. The Government is also requested to provide a copy of the law on "Professional Education" when adopted.***

Youth employment. The Government reports that in 2014, the number of people under 35 years of age who had the status of unemployed reached 669,100, that is, almost half of the total number of unemployed in all age groups. During 2014, and in line with the SES's objective, 343,800 young people found employment, of whom 211,400 had been unemployed. In addition, in 2014, almost 10,000 young people set up businesses with the help of a one-off unemployment benefit provided by the State Employment Service to support entrepreneurial initiatives among the unemployed. The Committee observes, however, that as indicated in the 2016 Government's action plan, the level of practical skills of young professionals, the level of youth employment in the chosen profession and the pace of development of entrepreneurship among young people leave much to be desired. Less than 40 per cent of higher education graduates find jobs in the field of knowledge that they have been taught. Encouraging young people to obtain professions and specialties within sectors of anticipated demand is therefore a priority in the 2016 action plan of the Government. In connection to an observation made by the Confederation of Free Trade Unions of Ukraine (KWPV) in 2012 that young persons and older jobseekers have difficulties in obtaining employment as some job advertisements include an age requirement, the Government indicates that job vacancy announcements are prohibited from putting age restrictions. ***The Committee requests the Government to provide information on the impact and sustainability of the measures taken to tackle youth unemployment and to promote the long-term integration of young persons in the labour market. Please also provide information on the measures taken or contemplated to prevent discriminatory restrictions, including age-related restrictions, in job vacancy announcements.***

Ukraine

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Observation 2016

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

Technical assistance with a view to strengthening the labour inspection services. The Committee notes with ***interest*** that the Government requested ILO technical assistance for support in undertaking its labour inspection reforms initiated in 2014. The Committee notes that, as a result of this request made in February 2015, the ILO has, among other technical activities, established a needs assessment of the current structure of the State Labour Service (SLS) in November 2015 (2015 ILO needs assessment). This makes a number of recommendations on how to improve the effective functioning of the SLS, applying international labour standards and using best practices as a reference. The Committee also notes the information provided by the Government in its report on the initiation of the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" in September 2016 which aims to improve the national legal framework as well as compliance mechanisms, including through the revision of the Regulations of the SLS, the organization of the labour inspection, and the collaboration with the social partners. ***The Committee requests that the Government provide information on the activities undertaken in the framework of the technical assistance provided and the measures taken to strengthen the labour inspection services in relation to the principles of the Convention.***

Articles 12(1)(a) and (b), 15(c) and 16 of Convention No. 81 and Articles 16(1)(a) and (b), 20(c) and 21 of Convention No. 129. Restrictions and limitations to labour inspection. Further to the Committee's reiterated request to amend Act No. 877-V of 2007 concerning the fundamental principles of state supervision and monitoring of economic activity, so as to bring it into conformity with the abovementioned Articles of the labour inspection Conventions, the Committee welcomes the Government's indication that further to amendments in 2014, Act No. 877-V of 2007 no longer applies to the activities in the area of labour and employment legislation by the State Labour Inspectorate.

The Committee notes however with ***deep concern*** the information provided by the Government in its report on the moratorium introduced between January and June 2015 on labour inspections (pursuant to the Concluding Provisions of Act No. 76 VIII of 28 December 2014 on the repeal of several legislative acts), as a result of which there was a significant rise in the number of complaints made to the SLS concerning labour law violations. In this respect the Committee notes with ***concern*** that the number of labour inspections between 2011 and 2014 decreased from 42,323 to 21,015 and that in 2015, only 2,704 labour inspection visits were undertaken. The Committee further notes with ***concern*** the information provided by the Government that two Bills have recently passed the first reading in the Parliament of Ukraine, namely Bill No. 2418a of 21 July 2015 and Bill No. 3153 of 18 September 2015, which propose to place a fresh moratorium on scheduled inspection visits until 31 December 2016 and thereby restrict state oversight and monitoring of labour law. However, the Committee also notes that an ILO delegation was invited by the Government in the context of a technical mission to Kyiv in October 2016 to attend a hearing in Parliament on the proposed amendments to the Labour Code, which are supposedly intended to bring the Labour Code into conformity with the principles of the Conventions. In this context, the Committee welcomes the fact that, following the mission, the Government has requested informal opinions in relation to three legislative drafts, including on the procedures and regulations concerning labour inspection in the area of working conditions, occupational safety and health and mining. ***Recalling that a moratorium placed on labour inspection is contrary to the principles of the Convention, the Committee urges the Government to ensure that the proposed amendments to the national legal framework are undertaken with the purpose of bringing the national legislation into conformity with the Conventions and do not introduce restrictions and limitations on labour inspection. The Committee strongly encourages the Government to continue to avail itself of ILO technical assistance for this purpose.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

Ukraine

C138 - Minimum Age Convention, 1973 (No. 138)

Observation 2016

Article 2(1) of the Convention. 1. *Scope of application and labour inspection.* The Committee previously noted that the Committee on the Rights of the Child (CRC), in its concluding observations (CRC/C/UKR/CO/3-4, paragraph 74), expressed concern at the high number of children below the age of 15 years working in the informal economy, in particular in illegal coal mines, as well as at the extent of violations of labour law regarding the employment of children. In this regard, the Committee urged the Government to take the necessary measures to adapt and strengthen the labour inspection services in the informal and illegal economy.

The Committee notes the Government's indication in its report that the State Labour Service of Ukraine (SLS) was formed following the merger of the State Service for Industrial Safety, Occupational Health and Safety and Mining Supervision and the State Labour Inspectorate pursuant to Decision No. 422 of 2014. It notes that the SLS developed a draft concept with a view to reforming the occupational health and safety management system and to increasing its effectiveness. Fundamental to this reform is the constant monitoring of occupational risks, including the employment of minors in high risk jobs. The Committee also notes from the Government's report submitted under the Labour Inspection Convention, 1947 (No. 81) that the ILO project on "the strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" was initiated in September 2016. This project aims to create conditions that enable the SLS to develop and implement effective measures to comply with international labour standards, including in the areas of occupational safety and health and labour inspection in the informal economy. The Committee further notes the statistical information provided by the Government including the number of labour inspections conducted, the number of infringements detected and the subject areas to which they relate, the number of administrative decisions issued and fines imposed, as well as the number of cases submitted to the public prosecutor's offices. According to this information, in 2014, the labour inspectors inspected 163 enterprises, including agricultural (31), trading (28), services (42) and others (62), which employed 334 minors between the ages of 14 to 18 years, and in 2015, two minors between the ages of 16 and 18 were found working. ***The Committee requests the Government to continue taking measures, including within the framework of the ILO project "the strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms", to strengthen the labour inspection services in the informal economy.***

2. *Minimum age for admission to employment or work.* In its previous comments, the Committee noted that under section 188(2) of the Labour Code, children of 15 years of age may exceptionally be authorized to work with the consent of their parents or guardians. The Committee observed that the above provision of the Code allowed young people to carry out an economic activity at an age lower than the minimum age for admission to employment or work specified by Ukraine upon ratifying the Convention, namely 16 years.

The Committee notes that the draft labour code of Ukraine also contains similar provisions under section 20(3). The Committee notes the Government's indication that a working group has been set up to revise the draft labour code, and that the recommendations provided by the Office on the draft labour code concerning the minimum age will be taken into consideration. ***The Committee expresses the firm hope that the Government will take the necessary measures, during the revision of the draft labour code, to ensure that no person under the age of 16 years may be admitted to employment or work in any occupation, in conformity with Article 2(1) of the Convention, except for light work as authorized under Article 7(1) of the Convention. It expresses the hope that the revised draft labour code will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

Articles 3(3) and 6. Authorization to perform hazardous work from the age of 16 years and vocational training. The Committee previously noted that by virtue of section 2(3) of the Order of the Ministry of Health of Ukraine No. 46 of March 1994, persons under the age of 18 years pursuing vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed. The Committee observed that children between 14 and 16 years were allowed to perform hazardous work during vocational training.

The Committee notes that the Government's report does not contain any information on this point. The Committee therefore once again reminds the Government that according to *Article 3(3)* of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, authorize employment or work as from the age of 16 years on the condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. In this regard, the Committee must emphasize that the necessary measures should be taken to ensure that young persons below 16 years of age engaged in apprenticeship do not undertake hazardous work and that measures should be taken to raise the minimum age for admission to hazardous work to 16 years, even if the required protective conditions are adequately provided (see General Survey of 2012 on the fundamental Conventions, paragraphs 380 and 385). ***The Committee therefore once again urges the Government to take the necessary measures to ensure that children who follow vocational training programmes or apprenticeships are allowed to perform hazardous work only from the age of 16 years, in conformity with Article 3(3) of the Convention. The Committee requests the Government to provide information on any progress made in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

Ukraine

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

Article 3(a) of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution, production of pornography or for pornographic performances. In its previous comments, the Committee noted the grave concern expressed by the Committee on the Rights of the Child in its concluding observations at the increase in the number of cases of sexual abuse, exploitation and involvement of children in prostitution and pornographic materials, and the alarmingly high number of Internet users of child pornography (5 million users per month).

The Committee notes the Government's information that the investigative agencies carried out pre-trial investigations in six cases registered under section 301 of the Criminal Code (import, manufacture, sale and dissemination of pornographic material) that involved children, which led to six indictments. The Government also indicates that in 2014, seven cases involving minors were registered under section 303 of the Criminal Code (pimping or involvement of another in prostitution). One such case was registered in 2015 and another case in the first four months of 2016, which led to five and two indictments respectively. No cases involving children were registered under section 302 of the Criminal Code related to maintenance of brothels and procurement. ***The Committee requests the Government to take the necessary measures to ensure that persons suspected of using, procuring or offering children under the age of 18 years for prostitution, the production of pornography and for pornographic performances, are thoroughly investigated and robustly prosecuted, and that penalties constituting an effective deterrent are imposed on them. It requests the Government to continue providing statistical information on the number and nature of violations reported, investigations, prosecutions, convictions and criminal penalties imposed.***

Article 7(2) of the Convention. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee notes from the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine (A/HRC/27/75) of 19 September 2014 (OHCHR report), that despite the efforts of the Donetsk Department of Education and Science, as well as school administrations, studies were suspended in several towns of the Donetsk region due to the ongoing armed conflict. In Slovyansk, Krasnyi Lyman and Krasnoarmiysk, two schools were damaged, while 62 schools and 46 kindergartens were not functioning, which affected 21,700 students and 5,600 children, respectively. Although, schools in other towns in the Donetsk region remained opened, attendance varied, with 25 per cent in Slovyansk district and 98 per cent in Makiivka district. The OHCHR report also indicates that the Government has identified 155,800 internally displaced persons (IDPs) from Donbas region and Crimea, of which 35 per cent are children who need to be enrolled in school. Moreover, according to the local authorities and IDP accounts, an estimated 450,000 people, including children, have been displaced from the cities of Donetsk and Luhansk. The Committee expresses its ***concern*** at the situation of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, particularly children in areas of armed conflict and internally displaced children. It requests the Government to provide information on the concrete measures taken in this regard and the results achieved.***

The Committee is raising other points in a request addressed directly to the Government.

C029 - Forced Labour Convention, 1930 (No. 29)

The Committee notes the Government's report as well as the observations received from the Trades Union Congress (TUC) on 1 September and 19 September 2016.

Articles 1(1), 2(1) and 25 of the Convention Suppressing all forms of forced labour, including trafficking in persons. Legal and institutional framework. Referring to its previous comments, the Committee takes note of the information in the Government's report relating to the adoption of the Modern Slavery Act 2015. It notes with ***interest*** that the Act strengthens the legal framework to combat all forms of forced labour by defining and criminalizing slavery, servitude, forced or compulsory labour and human trafficking as well as by increasing the applicable penalties. In particular, the Act provides for the establishment of an Independent Anti-Slavery Commissioner whose role is to encourage good practice in the prevention, detection and prosecution of modern slavery offences and the identification of victims. It also strengthens the powers of law enforcement authorities by, inter alia, allowing the Courts to make prevention orders, to decide on the confiscation of assets, or to make slavery and trafficking reparation orders against offenders to compensate the victim for any harm resulting from the offence. It also enhances legal support for victims and introduces a defence from being detained, charged and prosecuted for offences committed during exploitation. Finally, the Act requires commercial organizations to disclose a slavery and human trafficking statement for each financial year indicating what they are doing to eradicate modern slavery from their organization and their supply chains.

The Committee also notes with ***interest*** the adoption of the Human Trafficking and Exploitation (Scotland) Act 2015, which creates a single offence for all forms of exploitation and increases the maximum penalty, as well as the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which bring together new offences in a single piece of legislation, giving equal weight to trafficking in persons and slavery-like offences. Both Acts contain provisions similar to those of the Modern Slavery Act concerning new law enforcement tools and powers. The Government indicates that, pursuant to the adoption of these Acts, the Northern Ireland Department of Justice adopted an annual strategy to raise awareness of modern slavery offences, underpinned by four strategic priorities (prosecution, protection and support, prevention and partnership) and that the Scottish authorities are working alongside a variety of stakeholders to finalize a trafficking and exploitation strategy.

The Committee notes that the Independent Anti-Slavery Commissioner, whose mandate covers the whole of the United Kingdom, has adopted a Strategic Plan for 2015–17, which focuses on five priorities: (i) improved identification and care of victims; (ii) improved law enforcement and criminal justice response; (iii) promoting best practice in partnership working; (iv) promoting private sector engagement to encourage supply chains' transparency; and (v) encouraging international collaboration. In his first report, the Independent Commissioner highlights achievements and makes specific recommendations in relation to the abovementioned priorities. The Government indicates that it is considering the Independent Commissioner's recommendations and working with the partners across law enforcement and criminal justice agencies to improve the response to modern slavery. The Government also provides information on the creation of the national taskforce to tackle modern slavery.

The Committee takes due note of the measures taken to strengthen the legislative and institutional framework to combat all forms of forced labour, which bear witness to the Government's commitment in this regard. ***The Committee encourages the Government to pursue its efforts and to supply information on the implementation of the Strategic Plan of the Independent Anti-Slavery Commissioner as well as on the strategies adopted by Northern Ireland and Scotland, and on the results achieved. Please also provide information on the activities carried out by the National Taskforce as well as information on any evaluation undertaken of the policies pursued, on obstacles identified and on the measures taken or envisaged to overcome them.***

Application of effective sanctions. The Committee notes the information in the Government's report that, in 2015, 289 modern slavery offences were prosecuted and there were 113 convictions for modern slavery offences (compared to 253 prosecuted offences and 108 convictions in 2014). In his report, the Independent Commissioner points out to weaknesses in modern slavery crime recording by police forces in England and Wales leading to investigations that were not being instigated. This directly results in fewer prosecutions and convictions, and thus creates an environment where criminals can often operate with impunity. As a result, the Independent Commissioner has arranged for the funding and development of training programmes for judges and police officers, in particular focussing on how cases may be successfully prosecuted. In this regard, the TUC considers that one important causal factor of the low number of prosecutions and convictions is insufficient police capacity and resources. The TUC observes that a number of important tasks for implementing the Modern Slavery Act are assigned to the police, for which they do not have the capacity to deliver. ***The Committee requests the Government to continue to take measures to strengthen the training and capacity of law enforcement bodies in relation to the new legal framework adopted to combat modern slavery and the tools contained therein so as to improve the identification of cases, ensure that adequate investigations are undertaken and that sufficiently effective and dissuasive penalties are applied to perpetrators. It requests the Government to continue to provide information on the number of investigations, prosecutions and convictions.***

Protection and assistance for victims. The Committee notes the Government's indication that the Home Office has estimated that there are up to 13,000 potential victims of modern slavery. Support to potential victims is provided through the National Referral Mechanism (NRM) for a period of 45 days. The assistance is granted through contracts with NGOs after the potential victim has undergone an initial needs-based assessment. The Committee also notes the information concerning the assistance provided by Northern Ireland after the recovery period and the intention to extend the scope of the NRM to cover potential victims of slavery and forced labour. The Committee observes that, in his report, the Independent Commissioner states that, in 2015, 3,266 potential victims were referred to the NRM compared to 2,340 in 2014. While welcoming this increase, he observed that significant numbers of victims are not being identified and therefore remain unprotected in situations of abuse and exploitation. He also stressed the need to ensure that victims receive support tailored to their individual and complex needs. In its observations, the TUC acknowledges that the growing numbers of NRM referrals suggest improvements in awareness. However, the TUC indicates that victims report difficulties in accessing the services they are entitled to. It also refers to discriminatory and differential decision making based on the nationality of the victim and points out that the evaluation of the functioning of the NRM needs to be comprehensive and that any revision made be in the interest of the victims. ***The Committee requests the Government to strengthen its efforts to provide protection and assistance, including legal assistance, to victims of forced labour so that they are in a position to assert their rights, including their labour rights. It also requests the Government to continue to provide information on the measures taken in this regard, as well as the number of persons benefiting from such services.***

Article (2)(c). Privatization of prisons and prison labour. Work of prisoners for private companies. For a number of years, the Committee has been requesting the Government to take the necessary measures to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises.

The Committee notes the Government's indication in its report that there has been no change in the Government's position and that it continues to be of the view that its approach to imprisonment and rehabilitation is fully in line with the aims of the Convention. The Government considers that work in prisons falls within the exception provided for in the Convention since public sector supervision and control of prison work carried out in both public and private sector prisons is ensured. The Government once again refers to rigorous, independent inspections of private workshops and prisons; the strong legislative framework that protects working conditions of prisoners and prevents them from being exploited; and their access to effective systems for complaints. The Government adds that work in prisons continues to grow steadily and that it continuously explores possible new models for increased work in prisons, including through employers opening employment academies within prisons; call centres where companies provide experienced staff to instruct the prisoners so that they operate as close to the commercial conditions found in the community and provide real work experience; and employers providing valuable vocational work for offenders and offering them support in preparation for release and employment opportunities following their release. The Government also reiterates that rehabilitation has been retained as the primary purpose of the work and if it accepts the interpretation of the Convention by the Committee, work by prisoners in a number of

prisons in the country would no longer be viable, and that this would be damaging for prisoners and their rehabilitation.

The Committee notes with ***regret*** the Government's indication that there has been no change in its position. While acknowledging the objective of rehabilitation pursued by the Government in providing work to convicted prisoners, the Committee is bound to reiterate that the privatization of prison labour exceeds the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. Consequently, the work of prisoners for private companies is only compatible with the Convention where it does not involve compulsion, which requires the formal, freely given and informed consent of the persons concerned, as well as further guarantees and safeguards covering the essential elements of a labour relationship, such as the level of wages, the extent of social security, and the application of regulations on safety and health. As the Committee has repeatedly pointed out, in spite of the express prohibition for prisoners to be hired or placed at the disposal of private parties under the terms of the Convention, it is nevertheless fully possible for governments to apply the Convention when designing or implementing a system of privatized prison labour, once the abovementioned requirements are complied with. ***Therefore, the Committee urges the Government to take the necessary measures to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, with such consent being authenticated by the conditions of work approximating those of a free labour relationship.***

Follow-up to the recommendations of the tripartite committee (representation under article 24 of the ILO Constitution)

The Committee recalls that in November 2015 the Governing Body adopted the report of the tripartite committee set up to examine the representation submitted by the trade unions UNISON, GMB and Napo alleging non-observance of the Convention. The tripartite committee requested the Government to ensure that work imposed on persons sentenced to unpaid work requirements remained within the limits of the exception to forced labour provided for in *Article 2(2)(c)* of the Convention. The tripartite committee observed that the Secretary of State had made contractual arrangements with privately owned community rehabilitation centres (CRCs) for the execution of probation services, including unpaid work requirements. While being privately owned, the CRCs carry out public functions on behalf of the State. CRCs are in charge of placing offenders with providers to perform community work; they are not the beneficiaries of the product of the work carried out; and the work undertaken by offenders is carried out in the general interest of the community. Considering the involvement of private entities in the process of managing this penal sentence, the tripartite committee was of the view that there needed to be safeguards in place in terms of monitoring the circumstances in which the work is performed so as to ensure that the compulsory work actually performed was in the general interest; that the arrangements in place did not result in the private provider placing offenders in compulsory work for profit-making entities; and that private providers were paid solely in accordance with the financial terms of the contract concluded and that they made no benefit from the unpaid work undertaken by offenders.

The Government indicates that the CRC contracts are subject to robust contract management procedures and governance arrangements. The contractor is required to disclose details of all income that exceeds the cost of providing unpaid work; to demonstrate how it has reinvested that income in the provision of the services; to disclose its delivery models and the amount of income generated by outsourcing unpaid work to a subcontractor; and to demonstrate that it will not profit directly from unpaid work. The Government also provides a report from the CRCs Contract Management Group of the National Offender Management Service (NOMS) which indicates that NOMS is assured by the evidence provided that all 21 CRCs ensure offenders can access public complaint mechanisms effectively; that the CRCs do not profit directly from the provision of unpaid work; and that work undertaken is in the public interest. There are examples of CRCs setting up of community interest companies and an investment fund for offenders to appropriately manage income generated.

In its observations, the TUC disputes the Government's argument that private companies which are delivering unpaid work under contract on behalf of the Secretary of State are actually public authorities. To support its position, the TUC refers to and analyses various pieces of legislation and considers that it does not arise from the analysis that CRCs are public authorities. It also indicates that there is no case law to support the Government claim that CRCs are recognized and treated as public authorities and CRCs have not yet been subject to an application for judicial review.

The Committee notes this information. It observes that unpaid work requirements are imposed without offenders giving their consent to such sentences. As a form of compulsory work imposed as a consequence of a judicial decision, its performance must remain within the limits of the exception to forced labour provided for in *Article 2(2)(c)* of the Convention. ***Consequently, the Committee requests the Government to continue to ensure that the work performed under unpaid work requirements is adequately monitored; that CRCs are subject to the regular scrutiny of the public authorities; and that compulsory work performed under a sentence of unpaid work requirements is not undertaken for private entities. Please provide concrete and detailed information on the control and supervision carried out to ensure that CRCs do not benefit from the income generated by outsourcing unpaid work and that the work is genuinely in the general interest, as well as on any complaints lodged by the offenders.***

The Committee is raising other matters in a request addressed directly to the Government.

C081 - Labour Inspection Convention, 1947 (No. 81)

Reform of the occupational safety and health (OSH) inspection system. The Committee previously noted the Government's information on the reform of the national OSH inspection system implemented from 2011 with the launch of the "Good Health and Safety, Good for Everyone" programme and requested more detailed information on the new system, particularly with regard to the following issues: (i) the reduction in the number of labour inspections; (ii) the increase in alternative forms of compliance such as self-assessments undertaken by private consultants; and (iii) the holding of employers financially liable for interventions in workplaces where they violate labour law provisions.

Articles 3(1)(a) and (b), 10, 15(c), 16, 17 and 18 of the Convention. Coverage of workplaces by labour inspection. The Committee previously noted the Government's decision to modify the labour inspection strategy. The Government indicated that this is to reduce the bureaucratic burden on businesses and to make the OSH inspection system more effective. This is to be done by: (i) targeting inspections in higher-risk sectors (such as the construction industry or high-risk manufacturing and transport); (ii) reducing inspections in areas of concern but where inspections are unlikely to be effective (such as agriculture, quarries, health and social care); and (iii) discontinuing inspections in low-risk sectors (such as low-risk manufacturing and transport), although workplaces would still be subject to inspection in the case of underperformance concerning OSH. The Committee further noted that the identification of non-major hazard industries was made on the basis of a new targeting and intelligence system and that it was planned to reduce the number of inspections in non-major hazard industries, from 2010 to 2011 onwards, by one third every year. The Committee also noted the concerns previously expressed by the Trade Union Congress (TUC) that workplaces with identified lower safety risks do not necessarily have a lower incidence of cases of occupational disease, and that they should therefore not be categorized as low risk.

The Committee notes that the Government indicates, in reply to its request to provide information on the abovementioned selection process of workplaces for inspection, that inspections are targeted in line with sector strategies (which are determined based on the size and demographics of sectors, the incidence of occupational accidents and diseases and ill-health rates, potential future risks, and so forth) and indicators of serious risks in the area of OSH (gathered from labour inspections, concerns raised by workers, information transmitted by other sources such as individuals or entities, and so forth). The Committee also notes the Government's indication that the sector strategies will be reviewed in 2016 by the Health and Safety Executive (HSE) to set inspection priorities for the next three years, with the participation of the social partners. In addition, the Committee notes that inspection targets are determined through the "Going to the Right Places Programme" and the "Find-it targeting tool".

The Committee considers that the planning and targeting of inspection activities based on several indicators including in collaboration with the social partners may be an appropriate method to achieve improved coverage of workplaces by labour inspection. At the same time, it considers it important that governments ensure that certain, often vulnerable, categories of workers (such as workers in small and micro-enterprises and workers in agricultural areas) are not excluded from protection due to the fact that they are employed in workplaces or sectors that are not necessarily identified as being high risk, or in sectors where labour inspection is considered too resource intensive to undertake. ***The Committee requests further information regarding the effects of the OSH reform on the coverage of workplaces by labour inspection, including on the reviewed sector strategies and the workplaces that were targeted as a result. In this regard, it requests that the Government provide statistics on the number of labour inspections undertaken in each year since the implementation of the reform in 2011, including information on the number of workplaces covered by inspection (in small, medium-sized and large enterprises) disaggregated by the sector concerned, as well as the number of infringements detected and measures taken as a result. The Committee also requests that the Government provide statistical information on the number of labour inspectors and the budget allocations in each year since the reform.***

The Government is also requested to provide further information on the "Going to the Right Places Programme" and the "Find-it targeting tool", as well as clarification on whether indicators such as a high incidence of vulnerable workers play a role in determining priorities for inspection. The Committee also once again requests that the Government provide information on the means used by the labour inspectorate to detect underperformance in the area of OSH of workplaces that are currently not expected to be subject to inspections. The Committee further recalls that absolute confidentiality regarding the source of any complaint is required by the Convention, and requests that the Government indicate how confidentiality is preserved since the HSE is acting on intelligence transmitted by various sources as described.

Articles 3(1)(b), 5(a), 9 and 13. Strategies for compliance in lower-risk small and medium-sized workplaces (SMEs). In its previous comment, the Committee noted the initiatives in the envisaged reform, aimed at assisting employers particularly in lower-risk SMEs in meeting their legal obligations in the area of OSH. These included the establishment of a register for properly accredited OSH consultants to provide employers with easy access to accurate advice on OSH, and the development of guidance and online risk assessment tools. The Committee notes as set out above that the Government's strategy is to focus inspections on particular sectors and that the Government's strategy in relation to SMEs is to promote the use of private consultants. This is supplemented by the awareness-raising activities of the HSE, including through the Estates Excellence programme administered by the Health and Safety Laboratory (HSL), a public sector research establishment, which has offered free support to more than 6,700 businesses since 2010. The Committee notes that the Government indicates, in reply to its previous request for information on the use of OSH consultants and the risk-assessment tools, that no information is available on the impact on compliance as a result of their use.

The Committee considers that self-assessments may provide a way to expand the reach of labour inspection activities if the results of this process might be used by the labour inspectorate as a source of information for identifying violations, planning visits, and designing prevention strategies, as long as they are complementary to, and do not replace, labour inspection. However, the Government has provided no information in this regard. ***In the absence of a reply to its previous request concerning the existence of a legal requirement in this regard, the Committee once again requests that the Government provide information on whether the use of self-assessments in workplaces not subject to inspection is voluntary or mandatory. Should there be a legal requirement to carry out self-assessments, the Committee requests that the Government provide information on the extent to which compliance with this obligation is monitored and enforced, particularly whether dissuasive sanctions are imposed for incomplete or inaccurate reporting regarding violations; and any data gathered in this respect. The Committee also requests that the Government indicate whether the results of self-inspections are fed into the inspection programming process and to indicate that all workplaces remain liable to inspection by the labour inspectorate.***

Articles 6, 11 and 15(a). Fee for Intervention (FFI) scheme. In its previous comment, the Committee noted that it was envisaged to further extend the FFI cost recovery scheme, which, since 2012, obliges employers in breach of OSH requirements to cover the costs of the HSE in identifying, investigating, rectifying and/or enforcing relevant violations. The Committee notes that the Government indicates, in reply to the Committee's request concerning the impact of this scheme, that independent reviews generated generally positive findings, including that the adverse impact on duty holders was significantly less than expected and that the FFI provides incentives for the improvement of OSH management. Moreover, the Government expresses its view that businesses in serious breach of OSH laws, rather than the taxpayer, should bear the costs of the HSE in helping them put things right.

However, the Government also acknowledges that some concerns were identified in the triennial review report of the HSE (referenced through a web link in the Government's report) concerning the relationship between labour inspectors and those it regulates. The Committee notes that the triennial review report of the HSE raises specific concerns in relation to the FFI scheme as regards: a potential damage to the reputation of the HSE concerning impartiality and independence; the dependence of the HSE on the income from the FFI scheme (approximately £20 million (US$24.8 million) per year), without which its services are likely to be seriously impacted; and questions on whether the HSE has an income target to achieve through the FFI scheme.

The Committee considers that, in conformity with *Article 11,* it is essential for member States to allocate the necessary material resources so that labour inspectors can carry out their duties effectively. It is of the view that the regular allocation of resources shall be guaranteed irrespective of external conditions not under the control of the labour inspectorate. The Committee also recalls the principle provided for in *Article 6* that labour inspectors shall carry out their tasks

with impartiality, and the principle in *Article 15(a)* which provides that labour inspectors shall be prohibited from having any direct or indirect interest in the undertakings under their supervision. ***Recalling that it was previously envisaged to further extend the FFI scheme, the Committee requests that the Government provide information on the current scope of application of this scheme (such as its application in certain sectors, in cases of specific or serious violations, etc.). The Committee further requests that the Government provide information on the budgetary situation of the HSE, and the proportion of its budget raised from the FFI scheme. Please also provide information, where applicable, on any measures taken by the Government to avoid potential damage to the reputation of the HSE concerning impartiality and independence.***

United Kingdom

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee takes note of the observations of the Trades Union Congress (TUC) received on 1 September 2016 and the Government's comments thereon, as well as the TUC's further observations of 26 October 2016. The Committee also notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2016 concerning the application of the Convention. The Committee observes that the Conference Committee noted the Government's indication that secondary legislation was still under discussion in relation to the matters raised and noted with interest the Government's comments regarding the engagement of the social partners in this ongoing process. It further notes that the Conference Committee requested the Government to respect the rights of workers' and employers' organizations to establish and join organizations of their own choosing without previous authorization and to define the power of the certification authority in such a way that it would not be in contradiction with the provisions of the Convention.

The Committee notes generally from the Government's statement to the Conference Committee and its report that it is confident that the provisions of the newly enacted Trade Union Act were justified and proportionate, and fully comply with its international obligations on trade union rights. The Act aimed to balance the rights of people who take industrial action with those who are affected by that action, and will modernize industrial relations, while promoting a more effective, collaborative approach to resolving industrial disputes.

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. The Committee recalls its previous comments in which it requested the Government to review the Trade Union Bill with the social partners concerned with a view to its modification so as to ensure that the heightened requirement of support of 40 per cent of all workers for a strike ballot in important public services (section 3 of the Bill), does not apply to education and transport services. The Committee notes that the TUC raises this point again and also states that it considers that the Committee's views on a 50 per cent quorum are not fairly applied. On this latter point, the Committee does not share the assessment that has been made by the TUC concerning a country's legislation which also referred to a 50 per cent quorum. Moreover, the Committee considers it important to point out that there is no hard and fast rule relating to the fixing of a reasonable quorum. It recalls in this respect its views in its 1994 General Survey that the conditions established in the legislation of different countries relating to strike ballots vary considerably and their compatibility with the Convention may also depend on factual elements such as the scattering or geographical isolation of work centres or the structure of collective bargaining (by enterprise or industry), all of which require an examination on a case-by-case basis (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 170.)

The Committee further notes the concerns raised by the TUC that the quorum established by the Trade Union Act operates in the context of outmoded balloting methods, which tend to diminish participation levels. The Committee notes the observations by the Government that the Trade Union Act requires it to commission a review of electronic balloting within six months of Royal Assent and that the chair of this review was announced on 3 November 2016. ***The Committee trusts that the review will yield results in the near future and requests the Government to provide information on the progress made and the measures taken to facilitate electronic balloting in the context of the new requirements set out in the Trade Union Act.***

On the 40 per cent requirement, the Committee notes the Government's statement to the Conference Committee that, in view of the widespread adverse consequences of industrial action in public services, this requirement was important to ensuring necessary democratic legitimacy and clear majority support in services extremely significant to the public. The Committee recalls from its previous comments, however, that a requirement of support of 40 per cent of all workers effectively means a requirement of 80 per cent voting support where only the 50 per cent participation quorum has been met. ***In light of the concerns expressed above in relation to the challenges attached to the current balloting method and with a view to ensuring the rights of workers' organizations to organize their activities in full freedom, the Committee once again requests the Government to review section 3 of the Trade Union Act with the social partners concerned and take the necessary measures so that the heightened requirement of support of 40 per cent of all workers for a strike ballot does not apply to education and transport services.***

As regards picketing, the Committee notes the TUC's observations that the additional conditions for lawful picketing raise a number of concerns: the requirement to notify the police of the identity and contact details of activists may expose individuals to blacklisting; the union is automatically liable for any failure; and these requirements are discriminatory as they only affect pickets organized by trade unions but not those organized by other groups. The Committee notes the Government's comments that it recognizes peaceful picketing as a legitimate and lawful activity; however, there is worrisome evidence of intimidation during picketing. The Government assures, however, that the police is bound by the Human Rights Act and Data Protection Act when handling picket supervisors' contact details. ***The Committee requests the Government and the TUC to provide information on the impact of the application of this notification requirement in practice, including any complaints that may be made in relation to the handling of this information or its impact on lawful industrial action, and any information regarding the blacklisting of individuals engaged in lawful picketing.***

As regards the expanded role of the Certification Officer in sections 16–20 of the Trade Union Act, the Committee notes that the TUC raises concerns that: there is no guarantee that the Certification Officer will be genuinely independent; the Certification Officers' new powers will expose unions to the risk of constant harassment; the new responsibilities of investigation, adjudication and enforcement violate basic legal principles; and the introduction of a levy towards the cost of the Certification Officer. The Committee further notes the Government's indication that the powers granted to the Certification Officer in the Act are comparable to those of many other regulators, many of which are also funded by a levy on the organizations that they regulate. The Government considers that this regulation is proportionate and entirely consistent with the Convention. Finally, the Government adds that the Certification Officer has always carried out her or his functions independently and will continue to so do, as provided in section 16 of the Act. The Government adds that, with the exception of the investigative powers in relation to a union's financial affairs and membership records, the Certification Officer does not have any general authority to investigate the internal affairs of trade unions, except where a complaint from a trade union member has been made in relation to breaches of certain trade union rules or statutory obligations. Among others, the Act updated the investigatory powers of the Certification Officer in relation to political funds, union mergers and internal leadership elections and introduced a new financial penalty scheme. The precise amounts that may be imposed will be set by regulations upon which the Government would be consulting the unions and which would be subject to further parliamentary scrutiny. This is also the case with respect to the partial levy to fund the costs of the Certification Officer, while the Government will still fund some of the running costs. Finally, the Government indicates that the Act ensures that these new powers are used proportionately and appropriately, unions have the opportunity to make representations before any decision is made and there will continue to be a right of appeal. The Committee expresses its ***concern*** that the Act does appear to significantly expand the investigatory and enforcement powers of the Certification Officer, including in cases where no application has been made. ***The Committee invites the Government to review the impact of these provisions with the social partners concerned with a view to ensuring that workers' and employers' organizations can effectively exercise their rights to organize their administration and activities and formulate their programmes without interference from the public authorities.***

The Committee is raising other matters in a request addressed directly to the Government.

C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)

Parts III, IV, V, VII and X of the Convention. Benefits to be taken into account. The Committee recalls that the system of social protection in the United Kingdom comprises contribution-based and income-based social security benefits, as well as various tax credits and a range of means-tested social assistance benefits, which offer additional protection against poverty. Contribution-based benefits are payable at a flat rate to anyone who has paid the requisite amount of National Insurance Contributions (NICs). Income-based benefits replace or supplement contribution-based benefits and are available to all who meet the eligibility criteria as to their income. In case of sickness, income security is ensured through a mix of measures comprising employer liability provisions, contributory social insurance benefits and non-contributory income-tested benefits, which together seem to offer the level of social protection comparable to that guaranteed by the Convention. According to the Government, the obligation to provide sickness benefit cover is met through a combination of Statutory Sick Pay (SSP) payable to employed workers by their employers, and contribution-based Employment and Support Allowance (ESA), which is available to employed and self-employed earners who are not covered for SSP purposes or whose entitlement to SSP has come to an end after the maximum duration of 28 weeks. SSP can be considered the main benefit covering the majority of persons protected during the whole period of payment of sickness benefit, as prescribed by *Article 18(1)* of the Convention/Code. ESA plays a supplementary role protecting only those who are not covered by SSP. Taken together, the Government believes these benefits ensure the required level of income security for the duration outlined by Part III of the Convention/Code. As regards the role of the income-tested benefits in the case of sickness, they are currently being replaced by Universal Credit (UC), which "is a general anti-poverty benefit available to those at risk of falling into poverty. It is payable to people out of work as well as those in work and on a low income. The UK classifies this as a 'social assistance' rather than a 'social security' benefit … As Universal Credit is a form of social assistance it does not fall within the scope of the Code." Therefore, the Government considers that the United Kingdom's obligation under the accepted Parts of the Convention/Code should continue to be met for the foreseeable future on the force of the NIC-based social security benefits alone.

The Committee takes due note of these important statements. It notes in particular that the United Kingdom wishes to apply Part III of the Code/Convention on the force of the combination of SSP and ESA (Contributory) at the exclusion of income-tested benefits such as income-related ESA and UC. Moreover, the Government insists that non-contributory income-related benefits shall not be taken into account for the purpose of all accepted Parts of the Code/Convention. The Committee observes that a Contracting Party is free to declare on the force of which benefits provided by the national social security system it accepts the obligations of the Code/Convention under each Part covered by its ratification. While respecting the above choice of the Government, the Committee would only partially agree with its statement that social assistance benefits fall outside of the scope of the Code/Convention. Indeed, the Code/Convention does not apply to the discretionary social assistance provided by the local authorities as they deem necessary; it fully applies to non-contributory means-tested social assistance benefits provided to all residents as of right. It is for measuring the adequacy of the rate of such benefits that *Article 67* was included in the Code and Convention No. 102. The preparatory document on Convention No. 102 clearly states that *Article 67* "applies to cases of social assistance under which the benefit may be reduced by part of the income or means of the beneficiary during the contingency. Safeguards are obviously required if social assistance is to be admitted for the purpose of compliance … A Member wishing to comply on the basis of social assistance would therefore have to prove that its maximum benefit, which will be payable to a family without sufficient means, is actually a subsistence benefit and large enough to permit the family to live under tolerable conditions" (Report V(B), International Labour Conference, 35th Session, Geneva, 1952, p. 110).

Part III (Sickness benefit), Article 16 (Calculation of the level of benefit). The Committee notes that the calculation of the replacement level of the SSP and ESA (Contributory) for the standard beneficiary (man with wife and two children) includes Child Tax Credit (CTC) of £117.50 in respect of two children. CTC is a means-tested form of support for low-income families with children who are in or out of work and living in the United Kingdom. Means-tested benefits, according to the Government, are not a form of social security and fall outside the scope of the Code/Convention. Following this logic, CTC, as a means-tested benefit, shall not be included in the calculation of the replacement level of SSP or ESA. Recalculated without CTC, the replacement rate of SSP Week 1–28 stands at 30.25 per cent of the reference wage of an ordinary labourer, of ESA (Contributory) Week 1–13 at 26.50 per cent and for Week 14 onwards at 33.62 per cent. ***The Committee observes that these rates fall much below the minimum rate of 45 per cent guaranteed by the Convention/Code and concludes that social security benefits in case of sickness, as they are understood and conceived by the Government, do not permit the United Kingdom to fulfil its obligations under Part III of the Convention/Code as regards the level of benefit.***

Part IV (Unemployment benefit), Article 22 (Calculation of the level of benefit). The Committee notes that the calculation of the replacement level of the contribution-based Jobseeker's Allowance (JSA) for the standard beneficiary (man with wife and two children) includes CTC of £117.50 in respect of two children and refers the Government to its comments under *Article 16* above. Recalculated without CTC, the replacement rate of JSA Joint Claim stands at 36.75 per cent of the reference wage of an ordinary labourer, which is much below the minimum rate of 45 per cent guaranteed by the Convention. ***The Committee concludes that the United Kingdom does not fulfil its obligations under Part IV of the Convention as regards the level of unemployment benefit.***

Part X (Survivors' benefit), Article 62 (Calculation of the level of benefit). The Committee notes that, according to the data given in the report on Convention No. 102, the weekly rate of widow's benefit together with Child Benefit but excluding CTC will provide a replacement rate of 36.18 per cent, which is below the minimum level of 40 per cent guaranteed by the Convention. ***Referring to its comments under Article 16 above, the Committee concludes that the United Kingdom does not fulfil its obligations under Part X of the Convention as regards the guaranteed level of the survivors' benefit.***

Level of contribution-based and income-related benefits below poverty line. During the last decade, the Committee of Ministers of the Council of Europe has been repeatedly pointing out that, unlike the income-based ESA and JSA, the contribution-based ESA and JSA fell short of the minimum level prescribed by the Code/Convention and do not attain even the lowest EUROSTAT at-risk-of-poverty threshold of 40 per cent of median equivalized income in the United Kingdom and in the European Union as a whole. In its latest reply, the Government states that: (a) "the rates of contributory ESA and JSA are the same as the income-based rates of ESA and JSA respectively"; (b) "the Government believes that it maintains a strong welfare safety net that is adequate and balances the requirements of a sustainable welfare system with the need to ensure that work pays"; and (c) "the Committee should note that the main rates of Jobseeker's Allowance and Employment and Support Allowance provide a basic standard of living to those who are not in work at a level that does not disincentivise moving into work or back into work when the opportunity arises or their health permits". With respect to these statements, one should first of all note that the Government is not contesting the fact that the level of the said benefits is insufficient in terms of the international standard established by the Code and Convention No. 102 and the at-risk-of-poverty threshold established by EUROSTAT. Instead, it considers this insufficient level "adequate" in terms of internal standard of welfare, and consequently expresses no intention to comply with the United Kingdom's obligation to maintain social security benefits at least at the minimum level guaranteed by these international instruments. In appraising the Government's position from a legal point of view, the Committee is bound to recall some basic rules of conduct of the Contracting Parties with respect to their international obligations freely assumed under the Code and ILO Conventions. Thus, the Vienna Convention on the Law of Treaties 1969 stipulates, in particular, that "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Article 26: *Pacta sunt servanda*), and that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (Article 27: Internal law and observance of treaties). With regard to the internal provisions to incentivize sick or unemployed workers moving into work as soon as possible invoked by the Government to justify its failure to guarantee the minimum benefits prescribed by the Code and Convention No. 102, the Committee considers that the policy of keeping the basic standard of living of those who are on benefits and not in work below the absolute poverty line results in using social security as a means of economic compulsion to labour. While such policies were indeed common in Europe in the nineteenth century, in the twenty-first century the international community believes that "basic income security should allow life in dignity" and "secure protection aimed at preventing or alleviating poverty", as it was recently stated in the Social Protection Floors Recommendation, 2012 (No. 202). The policy of keeping the rates of SSP, ESA, JSA and the widow's benefit, contribution-based as well as income-based benefits, below the poverty line stands in direct contradiction to such objectives of the Code as "harmonising social charges in member countries" and "facilitating their social progress", stated in its Preamble. In such situations where national

welfare systems are designed in violation of the requirements of the Code, the Committee of Ministers reminds the Contracting Parties, as it has done in the Resolution CM/ResCSS(2016)21 on the application of the Code by the United Kingdom, that common European social security standards may be effective only so much as they are being respected and fulfilled by all and every member State. As, notwithstanding these reminders, the Government apparently remains deaf to the common European and international objectives of social protection, the Committee of Ministers should point out that, in accordance with Articles 66, 67 and 70(3) of the Code, the Government shall accept general responsibility for the due provision of the said benefits at the level which shall be sufficient to maintain the family of the beneficiary in health and decency, and shall not be less than the level calculated in accordance with the requirements of Article 66. To fulfil these provisions in good faith, the Code/Convention requires the Government to take all the necessary measures, including actuarial studies and calculations of the changes in benefits, insurance contributions, or the taxes allocated to covering the contingencies in question. Regretfully, there are no such measures mentioned in the report, which merely indicates that the proportion of expenditure on contributory benefits as a share of gross domestic product (GDP) has remained broadly stable over recent years, from 4.8 per cent in 2008–09 to 5.2 per cent in 2016–17, and forecast to be 4.9 per cent by 2020–21. ***Taking into account that, with these resources, the levels of abovementioned benefits were considered by Resolution CM/ResCSS(2016)21 to be manifestly inadequate in the meaning of Article 66 of the European Code of Social Security as well as in the meaning of Article 12(1) of the European Social Charter, the Committee asks the Government to undertake an actuarial study on the cost, in terms of a share of GDP, of bringing the level of contributory benefits to the minimum level guaranteed by the Code and to assess the capacity of the national economy to maintain them above the poverty line.*** As regards generation of additional resources which may be required for this purpose, the Committee draws attention to the 2010 estimation of the National Institute for Economic and Social Research, mentioned in the Government's report, that extending average working lives by one effective year, which is the purpose of raising the State Pension age from 65 to 66 years by 2020, could increase GDP by around 1 per cent.

In this context, the Committee has also considered the demand of the Government to take into account that contribution-based benefits represent one part of the overall welfare system that includes a mixture of income-related and social assistance benefits, such as housing benefit and tax credits, and that the Government is taking additional steps to incentivize and support people into work. This includes measures such as the introduction of the national living wage, which increases the minimum level of pay per hour for those aged 25 or over; the increases to the personal allowance in income tax which has ensured that workers keep more of what they earn; and the reforms to childcare including doubling the hours of free childcare available for working parents of 3–4 year-olds from 15 to 30 hours and the introduction of tax-free childcare. The Committee, much as it would have liked to take into account social assistance benefits and other measures mentioned above in assessing the overall level of protection ensured by the national social security system, regrets to point out that, following the position firmly expressed by the Government, these measures "fall outside the scope of the Code as they are not a form of social security". Nevertheless, the Committee is ready to enlarge the scope of social protections to be taken into account for the purposes of the Code and Convention No. 102, if the Government would reconsider its position.

Uzbekistan

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation 2016

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant Catering, Tobacco and Allied Workers' Associations (IUF) on the application of the Convention in practice received on 31 August 2016. ***The Committee requests the Government to provide its comments thereon.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee recalls that for a number of years it has been requesting the Government to take the necessary measures to amend sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 of the Labour Code so as to ensure that the legislation makes it clear that, only in the absence of trade unions at the enterprise, the branch or the territory, can the authorization to bargain collectively be conferred on other representatives elected by workers. The Committee notes that the Government reiterates that while the existence of other representative bodies in enterprises should not hinder trade unions from exercising their functions, both trade unions and other workers' representative bodies enjoy the same rights, including the right to engage in collective bargaining. While noting the Government's indication that if no trade unions exist at an enterprise, collective bargaining rights can also be granted to other workers' representatives, the Committee once again recalls that direct negotiation between the undertaking and workers' representatives, bypassing sufficiently representative workers' organizations, where these exist, can be detrimental to the principle that negotiation between employers and representative organizations of workers should be encouraged and promoted. ***The Committee, therefore, once again requests the Government to take the necessary measures to amend the abovementioned sections so as to ensure that it is clear that only in the event where there are no trade unions at the enterprise, the branch or the territory, can the right to bargain collectively be conferred on other workers' representatives. The Committee requests the Government to indicate the measures taken or envisaged in this respect.***

Collective labour disputes. The Committee had previously requested the Government to provide the relevant legislative texts establishing the procedure for settlement of collective labour disputes, as referred to in sections 33 and 281 of the Labour Code. The Committee notes the Government's indication that no legislation providing for the process of settling collective labour disputes (interest disputes) has been adopted and that pursuant to the Decision of the Supreme Soviet of the Republic of Uzbekistan of 4 January 1992, on the ratification of the Agreement and Protocol Establishing the Commonwealth of Independent States, before the adoption of relevant legislation, laws of the former USSR shall apply on Uzbek territory, provided that they do not contravene the Constitution and the legislation of the country. The Government points out that pursuant to the Law of the USSR on the process of settling collective labour disputes (1991), if a conciliation committee and labour arbitration commission have not been able to resolve the differences between the parties, a trade union has the right to use all other means provided for by the law to satisfy its stated demands, including total or partial suspension of work, including strikes. The Committee further notes that pursuant to section 5 of the Law, the labour arbitration decision is binding only if the parties have agreed on the compulsory nature of the decision beforehand. ***The Committee recalls that it had noted in the past the Government's indication that it was working on a draft law which would regulate collective labour disputes and in this respect, reminds the Government that it may avail itself of the technical assistance of the Office, if it so wishes.***

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Tobacco and Allied Workers' Associations (IUF) received on 31 August 2016, the observations of the International Trade Union Confederation (ITUC) received on 2 September 2016 and the observations of the Council of the Federation of Trade Unions of Uzbekistan (CFTUU) received on 21 November 2016, as well as the Government's report received on 9 September 2016.

Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production). In its previous comments, the Committee noted the observations made by the International Organisation of Employers (IOE) that, since the adoption of the Decent Work Country Programme (DWCP) in 2014, the Government and the social partners in Uzbekistan, with the active support of the ILO, had been working to ensure the elimination of possible risks of forced labour in cotton fields. It also noted the statement made by the ITUC that, while the measures taken in the country in cooperation with the ILO in the framework of the DWCP had proven to be effective, by and large, in eliminating child labour in the cotton sector, it was concerned about the continued presence of forced labour practices and other violations of adult workers' rights during the harvest period.

The Committee noted the adoption of an action plan in July 2015 guaranteeing the voluntary recruitment of cotton pickers and preventing forced and under-age labour during the cotton harvest as well as the directive from the Prime Minister to the Governors of all provinces to take urgent measures in this regard. The Committee also noted from the report of the Third Party Monitoring (TPM) on the use of child labour and forced labour during the 2015 cotton harvest, that with the assistance of the ILO and the World Bank, a Feedback Mechanism (FBM) was established by the Coordination Council to provide information and resolve any complaints about the use of forced labour during the 2015 cotton harvest. However, the Committee noted from the report of the TPM that while awareness of child labour was already at a high level, awareness of forced labour was still at an early stage. The report indicated that large-scale organized recruitment for cotton picking took place, but such recruitment took different forms depending on how the authorities decided to use the human resources at their disposal to meet their cotton quota. In a certain number of cases workers from both the public and private sectors indicated that they were forced to pick cotton against their will or had to pay someone else to pick cotton. The Committee noted from the TPM report that there were gaps in staff attendance registers and that consistent information was received from other sources that forced labour was more widespread than the monitoring process alone suggested.

The Committee notes the allegations made by the IUF that the Government of Uzbekistan continues to impose a state system of forced labour for the economic purpose of producing cotton. The IUF states that during the 2015 cotton harvest, more than 1 million people, including students, teachers, doctors, nurses and employees of government agencies and private business workers were forced to pick cotton under threat of a penalty, especially losing their jobs. Moreover, the Government imposes annual production quotas on farmers and uses coercion to enforce them. They are therefore obliged to fulfil production quotas or face a penalty.

Moreover, the Committee notes that the ITUC expresses the hope that the awareness-raising campaigns implemented by the social partners concerning child and forced labour and the establishment of grievance and redress mechanisms that the workers can use to report labour violations will be efficient and effective. The ITUC also indicates that there are a number of cases of involuntary engagement of workers as well as cases of extortion for replacement payments by local authorities which need to be investigated and prosecuted.

The Committee further notes the information provided by the CFTUU on the following measures taken in the framework of cooperation between Uzbekistan, the ILO and the World Bank for the implementation of ILO Conventions on child and forced labour in 2016: (i) training courses and seminars were conducted to improve the capacity of employees of ministries, departments, NGOs and farmers, including topics such as international labour standards and their implementation; (ii) awareness-raising campaigns against child and forced labour were carried out resulting in the dissemination of 100,000 flyers, 44,500 posters and 386 banners and an additional 500 banners by Farmers' Councils on voluntary employment; (iii) the concept of the 2016 national monitoring of the child and forced labour was revised so as to empower monitoring groups to address the identified problems on the spot through negotiations with employers on the basis of social partnership principles; and (iv) the FBM at the initiative of the Coordination Council on Child Labour issues, and another at the call centre of the Ministry of Labour, was being implemented. The CFTUU further indicates that the National Monitoring Group carried out 386 visits to the regions and cities of Uzbekistan, covering 1,940 entities, including farms, colleges, high schools, pre-school educational institutions, small businesses and health facilities, during which the working conditions of about 53,000 cotton pickers were examined. During these visits, the National Monitoring Group found: unauthorized access to the cotton fields of 79 students over 18 years during school hours for the purpose of earning extra money, and a total of 1,543 teachers and health workers who were involved in cotton-picking during their spare time. Moreover, on 74 farms, insufficient working conditions and rest periods for cotton pickers were identified.

The Committee notes the Government's indication in its report that the measures taken during the 2015 cotton harvest were not intended to be temporary in nature, they are rather evidence of the commitment of the authorities to the future improvement of recruitment conditions in the agricultural sector and the departure from the quota system in cotton production. In this regard, the Committee notes the Government's reference to the following measures taken, after the 2015 monitoring:

·-on 5 January 2016, an action plan 2016–18 was approved for the improvement of the working and employment conditions and social protection of agricultural workers consisting in five sections that include: improvement of the national legislative and regulatory structure related to labour relations; implementation of systematic measures to increase the level of mechanization in the agrarian sector; development of mechanisms and conditions of employment for seasonal agricultural work; institutional development and improvement of the feedback and national monitoring mechanisms for the prevention of child and forced labour; and widening outreach work among the population in respect of labour rights and the legal protection of workers' interests embedded in the system;

·-on 3 and 4 August 2016, a round table discussion including representatives of the ILO, IOE, ITUC, World Bank, UNDP, UNICEF and diplomatic representatives was held in Tashkent, entitled "Status and Prospects for Cooperation between Uzbekistan and the ILO". At this event, all the participants expressed their commitment and willingness to cooperate closely with Uzbekistan, both in the area of labour relations and in modernizing the economy, in the mechanization of agriculture, as well as in continuing to implement the measures to promote the fundamental rights of workers;

·-the first phase of a joint assessment with the ILO on measures to reduce the risk of child labour and forced labour was carried out from 18 to 21 July 2016, during which international experts noted systematic measures to implement ILO Conventions on child and forced labour; and

·-in August 2016, a publication entitled *Recommendations for a well-managed cotton-picking season and the creation of conditions for cotton pickers* which aims at observing the rule of law and to facilitate the free recruitment of cotton pickers was approved by the Cabinet of Ministers in August 2016, and 3,000 copies of this recommendation were published and dispatched to localities.

The Committee further notes the Government's reference to the results of the ILO quantitative survey on employment practices in the agricultural sector conducted by the research centre *(Ekspecrt fikri)* and noted by ILO officials during their visit to Uzbekistan in June 2016. It was noted that: (i) the number of cotton pickers utilized in 2015 decreased from 3.2 million in 2014 to 2.8 million in 2015; (ii) the number of voluntary participants in the 2015 cotton harvest had increased by almost 200,000 people; (iii) 23 per cent of those recruited to pick cotton (1.1 million) refused to take part in cotton picking and none of them experienced any negative consequences; and (iv) the number of medical employees, educational workers and students among the cotton pickers had decreased by 100,000. The Committee finally notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that negotiations are ongoing for an extension of the DWCP until 2020.

The Committee notes from the report of the ILO, Third Party Monitoring and Assessment of Measures to Reduce the Risk of Child Labour and Forced Labour

during the 2016 cotton harvest (TPM report) that since the 2015 harvest, the Government has made further commitments against child and forced labour, especially within the Action Plan for Improving Labour Conditions, Employment and Social Protection of Workers in the Agricultural Sector 2016–18. According to the TPM's report: several training workshops to build the capacity of officials, including *Hokims* (regional governors), were conducted before the harvest with ministries, organizations and entities involved at all levels (from national to *mahalla* to address the risk of forced labour which had a positive impact, as the officials interviewed indicated that they were aware of the forced labour issues; the public awareness campaigns during the harvest reached remote villages; and the messages on child and forced labour, on labour rights, and on the FBM hotline were distributed nationwide.

Referring to the preliminary results of the ILO quantitative survey, the TPM report indicates that of the 2.8 million cotton pickers in 2015, a significant number, about two-thirds, were recruited voluntarily and that those "at risk" on involuntary work were mainly from the education sector, medical staff and students. The TPM report indicates that while the unacceptability of child labour is recognized by all segments of society, awareness on risks of forced labour need to be improved. The TPM report points out that further measures need to be taken in order to reduce the risk of forced labour in the cotton harvest, such as: (i) a national high-quality training strategy on forced labour for all responsible actors involved in the cotton harvest needs to be developed; (ii) a functioning labour relations system for cotton pickers needs to be strengthened; (iii) the role of the Ministry of Labour needs to be improved in defining, regulating and enforcing roles, responsibilities and standards of labour relations in the cotton harvest, including intermediaries; and (iv) the Ministry of Health and Ministry of Higher and Specialized Education need to increase awareness about the risks of forced labour among their staff and students. The Committee further notes from the TPM report that the monitoring teams, led by ILO experts, visited 50 medical care facilities and found that they were functioning normally during the harvest and the staff attendance was usually monitored.

The Committee welcomes the policy commitments undertaken by the Government and the social partners which have had a positive impact on the use of child and forced labour during the cotton harvest. The Committee notes however that the TPM's report concludes that while important measures have been introduced for the voluntary recruitment of cotton pickers, they are not robust enough to decisively change recruitment practices. ***The Committee strongly encourages the Government to continue to take effective and time-bound measures to strengthen safeguards against the use of forced labour in the cotton harvest, including through strengthening a functioning labour relations system for cotton pickers, developing a high-quality training strategy for all actors involved in the cotton harvest and continuing to raise awareness among all segments of society about the risks of forced labour in the cotton harvest. The Committee also strongly encourages the Government to continue cooperating with the ILO and the social partners in the framework of the DWCP to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students, in cotton farming and to provide information on the measures taken to this end and the concrete results achieved, with an indication of the sanctions applied. Please also provide information on whether the DWCP has been extended until 2020.***

The Committee is raising other matters in a request addressed directly to the Government.

Uzbekistan

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

The Committee notes the Government's report received on 9 September 2016 and the observations of the Council of the Federation of Trade Unions of Uzbekistan (CFTUU), received on 21 November 2016.

Article 3(a) and (d) of the Convention. Worst forms of child labour. Forced or compulsory labour in cotton production and hazardous work. In its previous comments, the Committee noted the various legal provisions in Uzbekistan which prohibit both forced labour (including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code) and the engagement of children in watering and picking cotton (pursuant to the list of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age). It also noted the adoption of a Decent Work Country Programme (DWCP) 2014–16, which contains components on the application of the Convention and the Minimum Age Convention, 1973 (No. 138), as well as their corollary indicators to combat child labour.

The Committee further noted that the International Organisation of Employers (IOE) noted positively the rapid development in the country towards a complete eradication of child labour. Moreover, the Committee noted from the report of the Third Party Monitoring (TPM) of the use of child labour and forced labour carried out during the 2015 cotton harvest, that the authorities had taken a range of measures to reduce the incidence of child labour and make it socially unacceptable; the awareness on the unacceptability of using children under 18 years for the cotton harvest was high; and that the use of children in the cotton harvest had become rare and sporadic. It finally noted from the TPM report that a feedback mechanism (FBM) with telephone hotline numbers was established by the Tripartite Coordination Council on Child Labour which received allegations and investigated grievances while providing redress in some cases. The Committee welcomed the measures undertaken by the Government to prevent and eliminate the use of child labour during the cotton harvest which had a significant impact, including the very low number of children identified as involved in cotton-picking in 2015 by the TPM teams. The Committee requested the Government to continue its efforts to prevent and eliminate the use of child labour during the cotton harvest.

The Committee notes the information provided by the CFTUU on the findings of the national monitoring of the child and forced labour conducted in 2016. According to this information, the national monitoring group conducted 386 visits to the regions and cities of Uzbekistan, covering 1,940 entities, including 522 farms, 322 colleges and high schools and 123 pre-school educational institutions. During these visits, the monitoring group found five minors in the cotton fields, three of whom were involved in cotton-picking.

The Committee notes the information provided by the Government in its report on the various measures it has taken, recently, to prevent the engagement of children in cotton harvest. According to this information:

·-the employment of students under the age of 18 years in cotton harvest was banned by the Cabinet of Ministers at its July 2016 session;

·-*recommendations for a well-managed cotton-picking season and the creation of conditions for cotton-pickers* which aims at observing the rule of law and the effective abolition of child labour in the cotton harvest was approved by the Cabinet of Ministers in August 2016;

·-an action plan to provide for free employment of cotton pickers by farming enterprises which contains measures to prevent the employment of students under the age of 18 years in cotton picking was approved by the Cabinet of Ministers in July 2015;

·-a hotline of the State Labour Inspectorate was operational as of September 2015 which received a total of 456 calls related to labour law violations during the 2015 cotton harvest; and

·-within the framework of the joint integrated action plan on the participation of employers and employees in the implementation of ILO Conventions on forced and child labour, a total of 70,000 farmers were trained on preventing the worst forms of child labour in 2015–16.

The Committee also notes the Government's indication that negotiations are under way to extend the DWCP until 2020.

The Committee notes from the report of the ILO TPM and assessment of measures to reduce the risk of child labour and forced labour during the 2016 cotton harvest (TPM report) that since the 2015 harvest, the Government has made further commitments against child labour and forced labour, especially within the Action Plan for Improving Labour Conditions, Employment and Social Protection of Workers in the Agricultural Sector 2016–18. Measures to prevent child labour and forced labour include ministerial instructions, awareness and training events, extracurricular activities for children and attendance tracking of pupils and staff. The Committee notes from the TPM report that the two-phased (pre-harvest and harvest phase) assessment of measures by the seven assessment teams, led by ILO experts working together with national counterparts indicated that: (i) several training workshops to build the capacity of officials were conducted before the harvest; (ii) public awareness campaigns during the harvest reached remote villages; and (iii) the messages on child labour and labour rights, and on the FBM hotline were distributed nationwide on 836 banners, 44,500 posters, 100,000 leaflets, TV, radio and SMS texts. As a result, the unacceptability of child labour is recognized by all segments of society. According to this report, the 180 kindergarten and schools, and over 39 colleges and lyceums, which the monitoring team visited, functioned normally during the harvest and recorded a high pupil attendance. The TPM report, in its conclusions, states that the national monitoring, the FBM and the Ministry of Public Education are playing an increasing role in preventive measures and has put in place measures to prevent the organized use of children in the cotton harvest. The report further states that child labour generally does not exist in cotton picking and that ongoing vigilance, in this regard, seems to be fully recognized in Uzbekistan.

The Committee notes with ***interest*** the policy commitments undertaken by the Government and their impact in preventing and eliminating the use of child labour during cotton harvest. ***The Committee requests the Government to continue its efforts to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18 years. It also requests the Government to continue its measures to monitor the cotton harvest, strengthen record keeping in educational institutions, apply sanctions against persons who engage children in the cotton harvest, and further raise public awareness on this subject. Lastly, it requests the Government to continue to implement the DWCP in collaboration with the ILO, and with the participation of the Coordination Council. In this regard, please provide information on whether the DWCP has been extended until 2020.***

The Committee is raising other points in a request addressed directly to the Government.