

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

Observations 2017

Regional file by country -

Europe

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

Observation 2017

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

Articles 3(1)(a) and (b) and (2), and 14 of Convention No. 81 and Articles 6(1)(a) and (b) and (3), and 19 of Convention No. 129. *Labour inspection activities in the area of occupational safety and health (OSH) in agriculture.* The Committee notes the Government's indication, in reply to its previous request, that the number of inspections in the agricultural sector has remained at 0.8 per cent of total inspections. The Committee notes in this regard that, as indicated in the Government's Occupational Safety and Health Policy Document and Action Plan (2016–20), nearly half of the workforce in Albania is employed in the agricultural sector. The Committee also notes the Government's indication that no training has yet taken place for inspectors on agriculture-related subjects. **The Committee once again requests the Government to provide information on the measures taken to secure the enforcement of laws and regulations in agriculture, including with respect to OSH, and to continue to provide information on the number of inspections carried out in that sector. The Committee requests the Government to report on training for labour inspectors on agriculture-related subjects, specifying the subjects, duration, participation and outcomes.**

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. *Conditions of service.* The Committee previously noted the information in the 2009 ILO audit report on labour inspection services that the remuneration for labour inspectors was not attractive and that there was no real human resources strategy for recruitment and career development. The Committee notes the copy of Decision No. 726 of 21 December 2000 on salaries of employees of budgetary institutions provided with the Government's report, which breaks down the monthly salaries of civil servants. **The Committee requests the Government to indicate whether any measures have been adopted since the 2009 ILO audit report to improve the remuneration scale and career prospects of labour inspectors in relation to other comparable categories of public officials, and requests the Government for clarification regarding the actual remuneration scale and career prospects of labour inspectors in relation to other comparable categories of government employees exercising similar functions, such as tax inspectors or police officers.**

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. *Staffing and material means of the labour inspection services; scope of inspections carried out.* The Committee previously noted the Government's indication that 167 labour inspectors were not sufficient to fully perform the inspection tasks required by law. The Committee notes the Government's indication in its report that the number of labour inspectors employed by the State Labour Inspectorate and Social Services (SLISS) is currently 155 employees, with 37 at the central level and 118 employees at the regional level. The Committee further notes that the Government reports that the regional offices still do not have sufficient office equipment, that the SLISS has only eight vehicles (for 12 regions) and that funds are insufficient for the reimbursement of labour inspectors performing their duties. It notes in this respect the Government's indication in its report submitted under the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), that the main problem for labour inspection is the lack of financial resources, which limits the ability of inspectors to travel to entities that should be inspected. **The Committee requests the Government to take the necessary measures to ensure that the budget allocated to labour inspection is sufficient to secure the effective discharge of the duties of the inspectorate, given the decrease in the number of labour inspection staff and the continuing inadequacy of equipment and vehicles. The Committee also requests the Government to continue to provide information on the staffing and material means of the SLISS in performing inspections in agriculture, including transportation and local offices.**

Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. *Right of inspectors to free entry of workplaces.* The Committee notes the Government's indication that 90 per cent of inspections are conducted pursuant to a predetermined plan that is developed in cooperation with labour inspectors using the e-inspection portal, with the approval of the regional directorate of inspection. While the remaining 10 per cent of inspections are unscheduled and/or emergency inspections, which can be undertaken without authorization or notification, the Government reports that an authorizing officer shall issue an authorization within 24 hours. The Government indicates that labour inspectors are provided with cards so that they can identify themselves when entering workplaces and conducting inspection operations. The Committee observes that where only 10 per cent of all inspections are unscheduled and/or responding to emergency circumstances, this may undermine the effectiveness of predetermined scheduled inspections because problems may be concealed and thus remain undetected. **The Committee requests the Government to indicate the procedure by which the authorizing officer must issue an authorization, and the consequences for the inspection if the authorization is not issued within the 24-hour time frame provided. In addition, the Committee requests the Government to indicate how often the 10 per cent of unscheduled and/or emergency inspections actually take place within 24 hours, how often they take place without advance notification, and how often they result in findings of violations or unsafe conditions.**

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 22 and 24 of Convention No. 129. *Prosecutions and penalties.* The Committee noted, in its previous comments, that the number of fines imposed was relatively low (in 2011, 381 imposed in relation to over 14,000 inspections). In this respect, the Committee notes the Government's indication that Law No. 10279 of 2010 "on Administrative Offences" is used in conjunction with section 48 of Law No. 10433 "on Inspection" to provide appropriate administrative penalties where an infringement is detected during the inspection process. The Government indicates that the law aims to provide fair and equal treatment and non discriminatory rules to be applied by inspectors. The Government emphasizes that the main purpose of the policy pursued by the SLISS is to reduce the number of fines in a rational way, by focusing on prevention and awareness raising concerning safety and health at work rather than penalties. In addition, while the Committee noted in 2013 that it was not required for the labour inspectorate to pay an advance for the enforcement of fines issued, the Committee notes that the Government indicates that the SLISS repaid penalties in the amount of 11,487,713 Albanian lek (ALL) (approximately US\$101,780) in 2014 and ALL4,070,255 (approximately US\$46,060) from January to May 2015. **Noting that the policy pursued by the SLISS intends to reduce the number of fines in a rational way, the Committee once again requests the Government to provide information on the number and nature of fines imposed by virtue of labour inspections, the number of judicial executions launched for the enforcement of orders, as well as the number of accidents reported and violations detected during the reporting period. In addition, the Committee further requests information regarding the repayment of penalties by the SLISS, indicating the conditions for such repayment and the total amount of advance payments not reimbursed to the labour inspectorate.**

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

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

Observation 2017

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

Articles 3(1)(a) and (b) and (2), and 14 of Convention No. 81 and Articles 6(1)(a) and (b) and (3), and 19 of Convention No. 129. *Labour inspection activities in the area of occupational safety and health (OSH) in agriculture.* The Committee notes the Government's indication, in reply to its previous request, that the number of inspections in the agricultural sector has remained at 0.8 per cent of total inspections. The Committee notes in this regard that, as indicated in the Government's Occupational Safety and Health Policy Document and Action Plan (2016–20), nearly half of the workforce in Albania is employed in the

agricultural sector. The Committee also notes the Government's indication that no training has yet taken place for inspectors on agriculture-related subjects. **The Committee once again requests the Government to provide information on the measures taken to secure the enforcement of laws and regulations in agriculture, including with respect to OSH, and to continue to provide information on the number of inspections carried out in that sector. The Committee requests the Government to report on training for labour inspectors on agriculture-related subjects, specifying the subjects, duration, participation and outcomes.**

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Conditions of service. The Committee previously noted the information in the 2009 ILO audit report on labour inspection services that the remuneration for labour inspectors was not attractive and that there was no real human resources strategy for recruitment and career development. The Committee notes the copy of Decision No. 726 of 21 December 2000 on salaries of employees of budgetary institutions provided with the Government's report, which breaks down the monthly salaries of civil servants. **The Committee requests the Government to indicate whether any measures have been adopted since the 2009 ILO audit report to improve the remuneration scale and career prospects of labour inspectors in relation to other comparable categories of public officials, and requests the Government for clarification regarding the actual remuneration scale and career prospects of labour inspectors in relation to other comparable categories of government employees exercising similar functions, such as tax inspectors or police officers.**

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Staffing and material means of the labour inspection services; scope of inspections carried out. The Committee previously noted the Government's indication that 167 labour inspectors were not sufficient to fully perform the inspection tasks required by law. The Committee notes the Government's indication in its report that the number of labour inspectors employed by the State Labour Inspectorate and Social Services (SLISS) is currently 155 employees, with 37 at the central level and 118 employees at the regional level. The Committee further notes that the Government reports that the regional offices still do not have sufficient office equipment, that the SLISS has only eight vehicles (for 12 regions) and that funds are insufficient for the reimbursement of labour inspectors performing their duties. It notes in this respect the Government's indication in its report submitted under the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), that the main problem for labour inspection is the lack of financial resources, which limits the ability of inspectors to travel to entities that should be inspected. **The Committee requests the Government to take the necessary measures to ensure that the budget allocated to labour inspection is sufficient to secure the effective discharge of the duties of the inspectorate, given the decrease in the number of labour inspection staff and the continuing inadequacy of equipment and vehicles. The Committee also requests the Government to continue to provide information on the staffing and material means of the SLISS in performing inspections in agriculture, including transportation and local offices.**

Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. Right of inspectors to free entry of workplaces. The Committee notes the Government's indication that 90 per cent of inspections are conducted pursuant to a predetermined plan that is developed in cooperation with labour inspectors using the e-inspection portal, with the approval of the regional directorate of inspection. While the remaining 10 per cent of inspections are unscheduled and/or emergency inspections, which can be undertaken without authorization or notification, the Government reports that an authorizing officer shall issue an authorization within 24 hours. The Government indicates that labour inspectors are provided with cards so that they can identify themselves when entering workplaces and conducting inspection operations. The Committee observes that where only 10 per cent of all inspections are unscheduled and/or responding to emergency circumstances, this may undermine the effectiveness of predetermined scheduled inspections because problems may be concealed and thus remain undetected. **The Committee requests the Government to indicate the procedure by which the authorizing officer must issue an authorization, and the consequences for the inspection if the authorization is not issued within the 24-hour time frame provided. In addition, the Committee requests the Government to indicate how often the 10 per cent of unscheduled and/or emergency inspections actually take place within 24 hours, how often they take place without advance notification, and how often they result in findings of violations or unsafe conditions.**

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 22 and 24 of Convention No. 129. Prosecutions and penalties. The Committee noted, in its previous comments, that the number of fines imposed was relatively low (in 2011, 381 imposed in relation to over 14,000 inspections). In this respect, the Committee notes the Government's indication that Law No. 10279 of 2010 "on Administrative Offences" is used in conjunction with section 48 of Law No. 10433 "on Inspection" to provide appropriate administrative penalties where an infringement is detected during the inspection process. The Government indicates that the law aims to provide fair and equal treatment and non discriminatory rules to be applied by inspectors. The Government emphasizes that the main purpose of the policy pursued by the SLISS is to reduce the number of fines in a rational way, by focusing on prevention and awareness raising concerning safety and health at work rather than penalties. In addition, while the Committee noted in 2013 that it was not required for the labour inspectorate to pay an advance for the enforcement of fines issued, the Committee notes that the Government indicates that the SLISS repaid penalties in the amount of 11,487,713 Albanian lek (ALL) (approximately US\$101,780) in 2014 and ALL4,070,255 (approximately US\$46,060) from January to May 2015. **Noting that the policy pursued by the SLISS intends to reduce the number of fines in a rational way, the Committee once again requests the Government to provide information on the number and nature of fines imposed by virtue of labour inspections, the number of judicial executions launched for the enforcement of orders, as well as the number of accidents reported and violations detected during the reporting period. In addition, the Committee further requests information regarding the repayment of penalties by the SLISS, indicating the conditions for such repayment and the total amount of advance payments not reimbursed to the labour inspectorate.**

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

C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

Article 1 of the Convention. Protection of basic human rights. Freedom of association. The Committee recalls that section 5(4) of the Law on Foreigners (Law No. 9959 of 17 July 2008) recognized the right to organize of foreign nationals subject to obtaining a residence permit. The Committee had therefore requested the Government to take the required measures, where necessary through an amendment to the legislation, to ensure that all workers, including foreign workers without a residence permit, could exercise trade union rights, and particularly the right to join organizations which defend their interests as workers, in conformity with *Article 1* of the Convention. The Committee notes that the new Law on Foreigners (Law No. 108 of 28 March 2013), which repeals the Law No. 9959 of 2008, no longer contains the abovementioned provision. However, the Committee notes that whereas section 70 of the new Law on Foreigners provides that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as Albanian nationals, the Law contains no other provisions relating to the right to organize of foreign nationals. In this context, the Committee also refers the Government to its comments on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). **Recalling the provisions of the Constitution of Albania concerning fundamental rights and freedoms (Article 16(1)), the right to organize collectively (Article 46(1)) and the right of employees to unite freely in labour organizations (Article 50), the Committee requests the Government to confirm that all foreign workers, whether with a permanent or temporary residence permit or without a residence permit, can exercise trade union rights, and particularly the right to join organizations which defend their interests as workers in conformity with Article 1 of the Convention.**

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)

Observation 2017

The Committee notes the in-depth discussion on the application of the Convention by Albania in the Committee on the Application of Standards at the 104th Session of the International Labour Conference in June 2014.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014:

Article 3(a) of the Convention. Sale and trafficking of children for commercial sexual exploitation. The Committee previously observed that, although the trafficking of children for labour or sexual exploitation was prohibited by law, it remained an issue of concern in practice. It noted the Government's information concerning the National Anti-Trafficking Strategy as well as the various measures implemented to prevent child trafficking. Nevertheless, the Committee expressed its concern at the continued prevalence of the trafficking of children under 18 years of age in Albania.

The Committee notes the Government's information concerning its recent measures taken in the framework of the National Anti-Trafficking Strategy, including the establishment of standard operating procedures on the identification and referral of victims and potential victims of trafficking (SOPs), which were approved in 2014 and which enable the coordination and comprehensive identification, referral and protection of trafficking victims. The Government indicates that the implementation of the SOPs has enhanced the capacity of the law enforcement personnel, social security providers and the State Labour Inspectorate in this respect.

The Committee additionally notes the adoption of Act No. 10347 of 11 April 2014 which prohibits the sale and trafficking of children under sections 3(e) and 24. The Government indicates that, under this Act, and to achieve the objectives of its Action Plan for Children (2012–15), the Child Protection Unit (CPU) has been established and is collaborating with labour inspectors in municipalities and communes to strengthen sanctions for violations as well as to enhance the capacity of labour inspectors to identify children at risk. Finally, the Committee notes Act No. 144 of 2 May 2013, which has modified the Penal Code to increase the penalties for crimes against children, including crimes related to trafficking.

The Committee takes due note of the Government's legislative and programmatic measures to protect children from trafficking. It observes, however, that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined second to fourth periodic reports of Albania (CRC/C/ALB/CO/2-3, paragraphs 17 and 82) in 2012, expressed serious concern that Albania continues to be a source country for children subjected to sex trafficking and noted the lack of available data concerning these children. ***The Committee accordingly urges the Government to intensify its efforts, within the framework of the National Anti Trafficking Strategy and the implementation of the SOPs, to combat the trafficking of persons under 18 years of age, and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. The Committee requests the Government to provide data on the number of children subject to sex trafficking, to the extent possible, disaggregated by age and gender.***

Article 3(c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. Further to its previous comment, the Committee notes with **satisfaction** the adoption of Act No. 10347 of 11 April 2014 on the protection of children's rights which, under section 23, read in conjunction with section 3, prohibits the involvement of children under the age of 18 in the use, production and trafficking of drugs and narcotics. ***The Committee requests the Government to provide information on the application in practice of this new Act, including the number and nature of violations detected.***

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Street children and children from minority groups. In its previous comment, the Committee noted that significant numbers of Albanian boys and girls are engaged in begging, starting as early as 4 or 5 years, and that most children involved are from the Roma or Egyptian communities. It further noted the Government's statement that the major issues with regard to the Roma community are low levels of education (with high illiteracy and low numbers of pupils enrolled), poor living conditions, poverty, and high levels of trafficking and prostitution and that, although it took measures to increase attendance in schools by Roma children, the possibility of teaching the Roma language in schools had not yet been fully implemented.

The Committee notes the Government's information concerning a 2014 inter-institutional initiative entitled "Support for families and children living on the street", which aims to ensure the protection of children against all forms of abuse, exploitation and neglect. The Committee further notes the Government's references to the Action Plan for Children (2012–15) and the Action Plan for the Decade of Roma Inclusion (2010–15), both of which aim to, among others, register and increase the attendance and participation of Roma children in kindergarten and compulsory education. The Committee notes, in this connection, the Government's information contained in its written reply to the CRC on the combined second, third and fourth periodic reports (CRC/C/ALB/2-4) of 2012, which lists the various legislative and institutional reforms that have been carried out concerning the admission and attendance of Roma children, as well as its programme of cooperation with UNICEF to provide incentives to Roma children to attend education. The Committee further notes the Government's statistical information, which indicates that for the 2012–13 school year, 664 Roma children attended preschool, 3,231 Roma children attended compulsory education, and all Roma children received full reimbursement for their textbooks.

While taking due note of the Government's measures to protect children from living on the street and to enhance the opportunities for Roma children to attend education, the Committee also notes that the CRC, in its concluding observations (CRC/C/ALB/CO/2-3, paragraph 70), observed that, contrary to the law, minority children, and in particular Roma children, have limited possibility to be taught in their own language and learn their history and culture within the framework of the national teaching curricula and called for the Government to provide minority-language education, particularly for Roma children. It further takes into account the 2012 assessment report carried out by the National Inspectorate of Pre-University Education (IKAP), with UNICEF assistance, on the implementation of the "The Second Chance" programme for the education of students who have dropped out of school, which found that, despite the Government's programmes to increase school attendance, the number of Roma children who attend school still remained at very low figures. ***The Committee accordingly requests the Government to intensify its efforts to take effective and time-bound measures, including within the framework of Action Plan for Children (2012–15), the Action Plan for the Decade of Roma Inclusion (2010–15), and in cooperation with UNICEF, to ensure the protection of Roma children against the worst forms of child labour, particularly trafficking, forced begging and work on the streets. It also requests the Government to provide information on the implementation of the "Support for families and children living on the street" initiative, including the results achieved.***

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.

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

Observation 2017

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private companies. For a number of years, the Committee has been examining the situation of prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons, pursuant to section 46(3) of the Law on the execution of sentences. The Committee noted the indication of the Government that the prisoners working in private-run workshops are supervised only by prison staff and paid by the prison. The Committee repeatedly pointed out that the practice followed in this regard in Austria corresponds in all aspects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is "hired to" private contractors. It noted, in particular, that the Convention addresses not only situations where prisoners are "employed" by the private company or placed in a position of servitude in relation to the private company, but also situations where prisoners are hired to private enterprises but remain under the authority and control of the prison administration.

The Committee also noted the Government's repeated indication that prisoners working for private contractors benefit from rights and conditions of work that are similar to those guaranteed in a free labour relationship. Additionally, the Government stated that only about 2.5 per cent of companies operating in Austrian prisons are privately run and that care is taken to ensure that prisoners are free and willing to carry out work in prison premises on a fully informed basis.

The Committee notes the Government's information in its report that, as of 1 January 2017, the remuneration for work by detained persons was increased by 46.9 per cent in the standard wage index compared with the level of 1 March 2000. The Government also indicates that it is stipulated that inmates working in privately run workplaces inside the prison must also provide freely given and informed consent. However, the Committee notes that section 46(3) of the Law on the execution of sentences was not amended during the reporting period. The Committee also notes that, according to a document named "Correctional services in Austria" issued by the Ministry of Justice in August 2016, convicts and prisoners in precautionary measures of forensic placement, who are fit to work, are obligated by law to take over work. Prisoners who are required to work have to do the work that has been allocated to them; however, they must not be employed for work which might endanger their life or subject them to serious health hazards. The amount of work remuneration is in keeping with the wage of workers in the metal-processing industry resulting from collective bargaining. However, 75 per cent of work remuneration is withheld as contribution to prison costs. On average, prisoners in Austrian prisons receive €5 per day, after deduction of their contribution to prison costs and of their contribution towards unemployment insurance.

The Committee once again points out that, in the absence of the voluntary consent of the concerned prisoners, the other factors mentioned by the Government cannot be regarded as indicators of a freely accepted employment relationship. The Committee once again draws the Government's attention to the fact that the work of prisoners for private companies is only compatible with the Convention where it does not involve compulsory labour. To this end, the formal, freely given and informed consent of the persons concerned is required, in addition to further guarantees and safeguards covering the essential elements of a labour relationship, such as wages, occupational safety and health and social security. ***Noting that section 46(3) of the Law on the execution of sentences remains in force, the Committee requests the Government to provide information on how the freely given and informed consent of prisoners to work in private enterprise workshops inside prison premises is ensured in practice. The Committee also requests the Government to take the necessary measures to ensure that section 46(3) of the Law on the execution of sentences is revised, in order to bring it into conformity with the indicated practice by the Government and the requirements of the Convention.***

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

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

Observation 2017

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee drew the attention of the Government to several provisions of the Criminal Code, enforceable with sanctions of correctional work or imprisonment, both involving compulsory labour in accordance with section 95 of the Code on the Execution of Sentences. These provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views opposed to the established political, social or economic system. These provisions include:

- section 147 regarding defamation, defined as “dissemination, in a public statement ... or through the mass media, of false information discrediting the honour and dignity of a person”;
- sections 169.1 and 233, read together with sections 7 and 8 of the Act on freedom of assembly, regarding “organization or participation in a prohibited public assembly” and “organization of group actions violating public order”; and
- section 283.1 regarding “inflaming the national, racial or religious enmity”.

The Committee referred to two judgments handed down by the European Court of Human Rights (ECHR) in 2008 and 2010, which found that convictions based on section 147 of the Criminal Code constituted a breach of Article 10 of the European Convention on Human Rights, which protects freedom of expression. Moreover, the Committee noted that the Government adopted amendments in 2013 to widen the scope of section 147 of the Criminal Code, which introduce criminal liability for defamation committed “through a publicly displayed Internet information resource”, despite the Government’s commitment to decriminalizing defamation. The first criminal conviction on charges of defamation online was handed down on 14 August 2013. Furthermore, the ECHR handed down a judgment on 22 May 2014 concerning a case of imprisonment on charges of “organizing public disorder” (section 233 of the Criminal Code), subsequently replaced by the more serious charge of “mass disorder” (section 220.1 of the Code), of which the purpose, according to the ECHR, was to silence or punish an opposition politician (*Ilgar Mammadov v. Azerbaijan*, application No. 151172/13).

The Committee also noted that, as highlighted and condemned by an important number of United Nations and European institutions and bodies, a growing tendency had emerged in recent years to apply various provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers, human rights defenders and others who express critical opinions, under questionable charges which appear politically motivated, resulting in long periods of corrective labour or imprisonment, both involving compulsory labour. In this regard, the Committee observed that the following provisions of the Criminal Code are often used for this purpose: insult (section 148); embezzlement (section 179.3.2); illegal business (section 192); tax evasion (section 213); hooliganism (section 221); state treason (section 274); and abuse of office (section 308). Noting all this information with deep concern, the Committee strongly urged the Government to take all necessary measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views opposed to the established system.

The Committee notes the Government’s indication in its report, regarding section 147 of the Criminal Code that, based on the opinion of the ECHR, the Supreme Court has presented a proposal to the Parliament so that defamation shall only be punishable by fines and that other forms of punishment shall be removed from the Criminal Code. The Government also indicates that, under section 233 of the Criminal Code, four people were convicted in 2014, ten in 2015 and four in 2016.

The Committee also notes that, according to the Report of the UN Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan of 20 February 2017, in November 2016 the National Assembly approved amendments to the Criminal Code proposed by the Prosecutor General, which introduce section 148(1) (posting slander or insult on an Internet information resource by using fake user names, profiles or accounts), punishable by imprisonment for up to one year, and the extension of section 323(1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years’ imprisonment (A/HRC/34/52/Add.3, paragraph 46). The UN Human Rights Committee (HRC) also expresses its concern in its concluding observations of November 2016 that the maximum term of imprisonment under the Code of Administrative Offences for misdemeanours, with which human rights defenders are often charged (for example, hooliganism, resisting police and traffic violations), has been increased from 15 to 90 days. It is now equal to the minimum term of detention under the Criminal Code, which may amount to de facto criminal sanction (CCPR/C/AZE/CO/4, paragraph 20). Moreover, the findings of the UN Working Group on Arbitrary Detention during its mission to Azerbaijan in May 2016 indicate that human rights defenders, journalists, political opponents and religious leaders who criticize the Government and its policies face limitations on their work and personal freedom. At least 70 such individuals were reportedly detained on charges that included drugs- and arms-related offences, hooliganism and tax evasion. Lawyers who assisted in bringing cases of human rights defenders to the ECHR had been detained on charges of tax evasion, illegal entrepreneurship and abuse of authority (A/HRC/36/37/Add.1, paragraph 80).

The Committee further notes that the ECHR has continued to hear a number of cases from Azerbaijan concerning the detentions and convictions of individuals expressing opinions not in line with those of the ruling political establishment, particularly in the following cases: *Yagublu v. Azerbaijan*, application No. 31703/13, judgment of 5 November 2015; *Huseynli and others v. Azerbaijan*, application Nos 67360/11, 67964/11 and 69379/11, judgment of 11 February 2016; and *Rasul Jafarov v. Azerbaijan*, application No. 69981/14, judgment of 12 March 2016, among others. However, the rulings of the ECHR, including the one concerning Mr Ilgar Mammadov handed down in 2014, are not executed by the Government. Moreover, in his third-party intervention in the cases heard by the ECHR, the Council of Europe Commissioner for Human Rights concludes that there is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. It concerns human rights defenders, journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. These criminal prosecutions also constitute reprisals against those who cooperate with international institutions (CommDH(2016)6, paragraph 46; CommDH(2016)42, paragraph 44).

Noting the absence of any improvement in the situation as described above, the Committee **deplores** the increasingly restrictive legislation, as well as the increased administrative charges and criminal prosecutions brought by authorities to suppress the peaceful expression of political or ideological views opposed to the established system, despite numerous calls for action by the United Nations and European institutions and bodies. The Committee once again draws the Government’s attention to the fact that legal guarantees of the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of forced or compulsory labour as a punishment for holding or expressing political or ideological views, or as a means of political coercion or education (see General Survey on the fundamental Conventions, 2012, paragraph 302). **The Committee therefore strongly urges the Government to take immediate and effective measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views opposed to the established system, in both law and practice. In this regard, the Committee requests the Government to ensure that the abovementioned sections of the Criminal Code are amended, by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. It also requests the Government to take the necessary measures to ensure that the application of the Criminal Code and the Code of Administrative Offences in practice does not lead to punishment involving compulsory labour in situations covered by Article 1(a) of the Convention. Lastly, the Committee requests the Government to provide information on any progress made in this respect.**

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

C113 - Medical Examination (Fishermen) Convention, 1959 (No. 113)

Observation 2017

The Committee notes the reports sent on the application of the fishing Conventions ratified by the country. In order to provide a comprehensive view of the issues to be addressed in relation to the application of these Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

Medical Examination (Fishermen) Convention, 1959 (No. 113)

Article 4(1) of the Convention. Period of validity of medical certificates. The Committee notes the Government's statement that the frequency of in-service examinations depends on which follow-up category the subject is placed into: healthy, once every three years; practically healthy, annually; and with a chronic or compensated disease, on a case-by-case basis. While noting this information, the Committee recalls that the Convention provides that for young fishers the medical certificate shall remain in force for a period not exceeding one year. **Accordingly, the Committee requests the Government to indicate the measures taken or envisaged in order to comply fully with the requirements of this Article of the Convention.** The Committee further notes that the Government provided a list of the main laws and regulations governing medical examinations of fishers for the purpose of determining their fitness for work in Azerbaijan's fishing industry. Among those, the Committee notes the following: Decision of the Ministry of Health of Azerbaijan on Improving Compulsory Medical Examinations (No. 46 of 13 December 2012) and the Rules for Performing Compulsory Medical Examinations approved by Decision No. 24/2 of the Ministry of Health of Azerbaijan dated 15 May 2014. **The Committee requests the Government to provide copies of the abovementioned instruments and to indicate the legal provisions related to the implementation of the Convention.**

Article 5. Independent examination by a medical referee. The Committee had requested the Government to specify the legal provisions ensuring the fisher's right to a further examination by a medical referee if refused a certificate. The Committee notes the Government's statement that, in the event of a dispute over the result of a medical examination, the head doctor sets up an ad hoc panel within the medical institution in question, which decides whether the individual is physically fit for work on board a vessel, and that its decision is final. **Taking note of this information, the Committee requests the Government to provide copies of the relevant legal provisions.**

Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

Articles 3–17 of the Convention. Implementing legislation on crew accommodation requirements. The Committee had requested the Government to provide detailed information on the legislative or administrative provisions implementing Parts II, III and IV of the Convention, in order to be in a position to evaluate conformity of the national legislation with the requirements of the Convention.

Regarding the implementation of Part II (*Articles 4 and 5*), the Committee notes the Government's reference to the Regulations on the Rules for Ship Inspection, approved by the Cabinet of Ministers which provides for an initial inspection of crew accommodation requirements of vessels before their registration. The Committee further notes that according to the Government the performance of these inspections, which also take place during the re-registration process of ships, have been delegated to classification societies. The Committee notes, however, that the abovementioned Regulations do not seem to provide inspections when the crew accommodation of a vessel has been substantially altered or reconstructed, as required by *Article 5* of the Convention. **The Committee requests the Government to indicate how it gives effect to this requirement of the Convention.**

Regarding Part III (*Articles 6–16*), the Committee notes the Government's statement that, in accordance with article 148(2) of the Constitution, "international agreements to which the Republic of Azerbaijan is a party are an integral part of the law of the Republic of Azerbaijan", and that "[a]ll of the ILO Conventions ratified by Azerbaijan have the force of national law and are an integral part of labour law". The Committee recalls, however, that *Article 3(1)* of the Convention prescribes that each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention. The Committee recalls that even if the Convention is considered as an integral part of the law of Azerbaijan, this would not be enough to give effect to the provisions of the Convention that are not self-executing. This is the case, for example, of *Article 6(9)* which requires that the competent authority shall decide to what extent fire prevention or fire retarding measures shall be required to be taken in the construction of the accommodation; and of *Article 8(4)* which provides that the competent authority shall prescribe the standard concerning the heating system for the crew accommodation. In addition, according to *Article 3(2)(e)*, the laws or regulations shall require the competent authority to consult periodically the fishing-vessel owners' and fishers' organizations, where such exist, in regard to the framing of regulations, and to collaborate so far as practicable with such parties in the administration thereof. **In view of the above, the Committee requests the Government to provide full particulars on the manner in which all the detailed accommodation standards included in Part III of the Convention are implemented in law and practice.**

Regarding Part IV (*Article 17*), the Committee takes note of the Government's statement that the national law does not contain any requirements for modifications to be made in vessels in the various cases covered by *Article 17* of the Convention and especially *paragraph 2(a) and (b)*, in respect of vessel re-registration. **The Committee takes note of this information.**

C126 - Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

Observation 2017

The Committee notes the reports sent on the application of the fishing Conventions ratified by the country. In order to provide a comprehensive view of the issues to be addressed in relation to the application of these Conventions, the Committee considers it appropriate to examine them in a single comment, as follows.

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physically fit for work on board a vessel, and that its decision is final. **Taking note of this information, the Committee requests the Government to provide copies of the relevant legal provisions.**

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Regarding Part IV (*Article 17*), the Committee takes note of the Government's statement that the national law does not contain any requirements for modifications to be made in vessels in the various cases covered by *Article 17* of the Convention and especially *paragraph 2(a)* and *(b)*, in respect of vessel re-registration. **The Committee takes note of this information.**

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

Observation 2017

Article 2(1) of the Convention. 1. Scope of application and the application of the Convention in practice. The Committee previously observed that although the provisions relating to the minimum age of admission to employment or work in the Labour Code did not appear to apply to work performed without an employment agreement, including self-employment or work in the informal sector, the Government had stated that the Convention constitutes part of the labour legislation in the country, and must therefore be implemented by all employers and private individuals. The Committee also noted the Government's statement during the discussions of the Conference Committee on the Application of Standards in June 2011 that, as of January 2011, 20,000 children were working in agriculture, out of which 5,000 were self-employed. In this regard, the Conference Committee urged the Government to take concrete measures to ensure that the protection envisaged by the Convention was provided to children who work on their own account or in the informal economy. The Committee noted that during the period 2012–13, the Labour Inspection Service inspected 16,887 enterprises in all sectors of the economy, including 431 agricultural enterprises, regardless of ownership and legal form, and identified five cases of violations of the rights of workers under 18 years of age for which a total fine of 5,000 Azerbaijani new manat (AZN) (approximately US\$6,374) were imposed on the employers found guilty. The Committee further noted the Government's indication that the Ministry of Labour and Social Protection and the State Committee on the Family, Women and Children signed a joint action plan to prevent the exploitation of child labour for the period 2013–15, which was being implemented in cooperation with the competent state bodies, non-governmental organizations (NGOs) and social partners. However, the Committee noted the significant number of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations. **Noting the absence of information provided in the Government's report in this regard, the Committee once again urges the Government to take measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy, particularly on cotton, tobacco and tea plantations. It requests that the Government provide information on specific measures taken in this regard, as well as on the results achieved. The Committee also requests the Government to provide information on the number and nature of violations relating to the employment of children and young people detected by the labour inspectorate, especially in agriculture, and the number of persons prosecuted and penalties imposed. Finally, the Committee requests the Government to provide information on the measures implemented within the framework of the joint action plan to eliminate child labour.**

2. Minimum age for admission to employment or work. The Committee previously noted that, upon ratification of the Convention, the minimum age of 16 years was specified under *Article 2(1)* of the Convention. However, it noted that section 42(3) of the Labour Code allows a person who has reached the age of 15 years to be part of an employment contract, and that section 249(1) specifies that "persons who are under the age of 15 shall not be employed under any circumstances". In this regard, the Committee noted that pursuant to technical assistance from the ILO, a draft had been developed entitled: "On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of the ILO Minimum Age Convention, 1973 (No. 138)", (draft amendments to the labour law) which proposed to amend section 249(1) of the Labour Code to raise the minimum age for admission to employment from 15 years to 16 years of age. The Committee notes with **regret** that the Government does not provide any new information in this regard. **The Committee therefore once again urges the Government to take the necessary measures to ensure the adoption, in the near future, of the amendments to the labour law which will establish a minimum age of 16 years for admission to employment or work in all sectors. The Committee requests that the Government provide information on any progress made in this regard, as well as to provide a copy of the amendments to the labour law, once adopted.**

The Committee is raising another matter in a request addressed directly to the Government.

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

Observation 2017

Article 6(2) of the Convention. Duty of employers to collaborate when undertaking activities simultaneously at one workplace. The Committee previously noted the Government's indication that when several employers undertake activities simultaneously at one workplace, their mutual obligations are, in a general

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manner, specified under contracts on common works, and it requested further information, including extracts from such contracts. The Committee notes the Government's reference, in reply to its previous request, to the provisions of the Labour Code concerning employers' obligations which respect to occupational safety and health (sections 215, 216 and 220). It notes that these provisions do not require employers to collaborate, as they undertake activities simultaneously at one workplace, in order to comply with the prescribed measures without prejudice to the responsibility of each employer for the health and safety of his or her employees. ***The Committee therefore requests the Government to take measures, in law or practice, to ensure that whenever two or more employers undertake activities simultaneously at one workplace they collaborate in order to comply with prescribed occupational safety and health measures.***

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

Observation 2017

The Committee notes the observation of the Belarusian Congress of Democratic Trade Unions (BKDP), received on 31 August 2017.

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 May–June 2016, concerning the application by Belarus of the Convention. In its conclusions, the Conference Committee urged the Government to accept the technical assistance of the ILO and to constructively engage with the ILO at the highest levels to resolve the issues before its next sitting. The Committee also notes the report of the Technical Advisory Mission of the ILO to Belarus that took place from 19 to 23 June 2017.

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Compulsory labour imposed by the national legislation on certain categories of workers and persons. The Committee previously noted with regret that several new provisions had been introduced into the national legislation, the application of which could lead to situations amounting to forced labour, and were thus incompatible with the obligation to suppress the use of forced or compulsory labour in all its forms, as required by the Convention. In particular, the Committee drew the Government's attention to the new provisions of the national legislation.

1. *Compulsory labour imposed on workers in the wood processing industry.* The Committee noted the adoption of Presidential Decree No. 9 of 7 December 2012 on additional measures for the development of the wood industry, and more particularly section 1.2 which provides that an employee can only terminate his or her contract with the consent of the employer.

The Committee notes that, in its conclusions, the Conference Committee noted with interest the Government's explanation of steps taken to repeal Decree No. 9 by Presidential Edict No. 182.

The Committee notes with **satisfaction** the Government's information in its report that Decree No. 9 has been withdrawn by Edict No. 182 of 27 May 2016, a copy of which is attached to its report.

2. *Compulsory labour imposed on persons who have worked fewer than 183 days the previous year.* The Committee noted the adoption of Presidential Decree No. 3 of 2 April 2015 on the prevention of dependency on social aid, which provides that citizens of Belarus, foreign citizens and stateless persons permanently residing in Belarus who have not worked for at least 183 days in the last year, and thus have not paid labour taxes for the same period, are required to pay a special levy to finance government expenditure. Non-payment or partial payment of such a levy entails administrative liability in the form of a fine or administrative arrest with compulsory community service (sections 1, 4 and 14 of the Decree). The Committee noted that, in its observations on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), received on 31 August 2015, the BKDP expressed concern at the use of compulsory community service in that regard.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Decree No. 3 and ensure that it is in full conformity with the Convention.

The Committee notes the observation of the BKDP that Presidential Decree No. 1 of 2017 amended Decree No. 3. However, the amendments, such as additional periods for participating in financing public expenditures, do not change the discriminatory nature of Decree No. 3. It further indicates that, Decree No. 3 was unofficially suspended by the Government following the call for its abolition from various stakeholders, but not repealed. Moreover, in the proposal of a new version, the Government again intends to implement the principle "if you do not work then you are to pay for services".

The Committee takes due note of the Government's indication in its report, and to the mission, that Decree No. 3 is suspended following the President's instruction. While 62,700 people have paid the labour taxes in 2015, the tax authorities have stopped sending out notices for tax payments in 2017. Moreover, the provisions providing for administrative liability for not paying the tax have not been applied, and no penalties have been imposed on this ground in practice. The Government also indicates that a new conceptual framework is being developed to amend Decree No. 3, which shifts the focus from fiscal measures to the stimulation and promotion of employment and the reduction of illegal employment. A draft legislative text in this regard is expected to be completed by 1 October 2017.

The Committee notes from the mission report that the Government has provided assurances to the mission that public consultation, including with the social partners, would be conducted during the development of the amended version of Decree No. 3. **The Committee therefore requests the Government to pursue its efforts to ensure that Decree No. 3 is amended in the near future, after consultation with all the relevant stakeholders, especially the social partners. It also requests the Government to provide information on any progress made in this regard.**

3. *Persons interned in "medical labour centres".* The Committee noted the adoption of Law No. 104-3 of 4 January 2010 on the procedures and modalities for the transfer of citizens to medical labour centres and the conditions of their stay, which provides that citizens suffering from chronic alcoholism, drug addiction or substance abuse who have faced administrative charges for committing administrative violations under the influence of alcohol, narcotics and psychotropic, toxic or other intoxicating substances may be sent to medical labour centres as a result of a petition filed in a court of law by the head of internal affairs (sections 4–7 of the Law). Such persons are interned in medical labour centres for a period of 12 to 18 months and have an obligation to work.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Law No. 104-3 and ensure that it is in full conformity with the Convention.

The Committee notes the Government's information in its report, and to the mission, that not everyone who suffers from these problems can be sent to the centres, but only those who repeatedly (three or more times in one year) have disturbed public order and been found in a state of intoxication from alcohol, narcotics or other intoxicating substances. As a further condition, the individuals concerned must have received a warning after committing these offences that he or she might be sent to such a centre but has nevertheless committed administrative offences for similar violations within a year of that warning. The Government emphasizes that in view of the special situation of the individuals concerned, it is impossible in practice to implement a medical and social rehabilitation programme without such restrictive measures. According to the Ministry of Internal Affairs, 8,081 people were sent to medical labour centres since 2016, of which the number was 4,388 for the first half of 2017. Only 52 persons refused to work.

The Committee also notes the Government's indication in its report and to the mission that persons who are sent to medical labour centres have to undergo a medical examination to determine their level of addiction, and then receive medical and social rehabilitation services, including medical and psychological treatment, personal development and self-education, as well as support for the re-establishment and maintenance of the family relationship. Moreover, employment is considered as one of the most important tools for achieving social reintegration. For this purpose, vocational guidance, training and retraining, as well as skills development are provided in the medical labour centres. The Government further states that the concerned persons are placed in employment in consideration of their ages, capacity for work, health status, skills and qualifications. They are also paid and granted annual and other types of leave in accordance with the labour law. In 2014 and 2015, 870 persons attended formal vocational technical education programmes, while in 2015, 387 persons received hands-on vocational training in the workplace. Moreover, as of June 2017, 5,647 persons were holding paid jobs in medical labour centres. The types of work carried out by such individuals include wood processing, agricultural work and public cleaning. **The Committee therefore requests the Government to continue providing information on the implementation of Law No. 103-4 in practice, including the number of persons who are placed in the medical labour centres, specifying whether this placement is the consequence of a judicial conviction or administrative decision.**

4. *Parents whose children have been removed.* The Committee previously noted that Presidential Decree No. 18 of 24 November 2006 on supplementary measures for state protection of children from "dysfunctional families" authorizes the removal of children whose parents are leading "an immoral way of life", or

are chronic alcoholics or drug addicts, or in some other way unable to properly perform their obligations to raise and maintain children. Such parents who are unemployed or who are working but are unable to pay full compensation to the State for the maintenance of their children in state childcare facilities are subject to a court ruling on employment, with an obligation to work (section 9.27 of the Code on Administrative Offences and section 18.8 of the Procedural Executive Code of Administrative Offences). Such a court ruling is a ground for dismissal of the person concerned from her or his previous place of work (section 44(5) of the Labour Code). Parents who avoid such work may be held criminally responsible, pursuant to section 174(2) and (3) of the Criminal Code, and shall be punishable by community service or corrective labour for a period of up to two years, imprisonment for up to three years, as well as restrictions or deprivation of freedom, all involving compulsory labour.

The Committee notes that, in its conclusions, the Conference Committee urged the Government to provide additional information on the operation in law and practice of Decree No. 18 and ensure that it is in full conformity with the Convention.

The Committee notes the Government's statement in its report and to the mission that the main objective of Decree No. 18 is to improve the situation in "dysfunctional families" so that children can return to live with their parents safely. In order to create circumstances enabling the concerned parents to renounce their antisocial, often immoral lifestyles, it is important for them to have a job. However, many of such parents are unemployed and have lost vocational skills for a long period; it is thus difficult for them to find work on their own as employers are not interested in hiring such persons. In this respect, Decree No. 18 establishes a mechanism whereby a court can order concerned parents to take up employment. Job placements were arranged at workplaces defined in coordination with the local authorities, such as employment and social protection agencies, which have a list of over 6,770 enterprises providing secure workplaces for such individuals. Moreover, one of the conditions in the selection of work is that the wage level is sufficiently high, in order to compensate for the expense of maintaining their children.

The Committee also notes the Government's information in its report that, in this regard, court orders were sent to 1,833 persons in 2014, 2,317 in 2015, 2,289 in 2016 and 1,128 in the first half of 2017. As of 31 March 2017, 8,371 persons had been placed in employment by the State employment authorities. Moreover, in 2016, 1,200 persons were prosecuted under section 174 of the Criminal Code, while the number was 496 for the first half of 2017. Additionally, from 2007 to 2016, a total of 33,832 children were recognized as needing State support, of which 21,021 children (more than 58 per cent) returned to their families and their parents. However, the Committee notes the information of the BKDP provided to the mission that, in one case, adopted children had been removed from a family for certain political views of the parents, even though the economic and social circumstances in the family were good. **While taking due note of the rehabilitation purpose of Decree No. 18 and the high rate of children returning to their parents, the Committee requests the Government to take the necessary measures to ensure that the implementation of the Decree in practice does not go beyond the purpose of rehabilitating dysfunctional families, in particular not for political purposes. The Committee also encourages the Government to consider revising provisions concerning the direct deduction of wages from persons in order to compensate the expenses of maintaining their children in State childcare facilities.**

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

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

Observation 2017

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for the expression of political views or views opposed to the established political, social or economic system. The Committee previously noted that violations of the provisions governing the procedures for the organization or holding of assemblies, meetings, street marches, demonstrations and picketing, established by Law No. 114-3 of 30 December 2007 on mass activities, are punishable by sanctions of imprisonment or the limitation of freedom, for the "organization of group actions violating public order" (section 342 of the Criminal Code) which involve compulsory labour under sections 50(1) and 98(1) of the Criminal Enforcement Code. The Committee also noted the adoption of section 369(2) of the Criminal Code, under which a person sentenced to administrative arrest for violations of the provisions governing the procedure for the organization or holding of assemblies, meetings, street marches, demonstrations and picketing, as defined by the Law on mass activities (pursuant to section 18(8) of the Code of Executive Procedure relating to Administrative Offences), who commits the same violation within one year can now be sentenced to imprisonment for up to two years, involving compulsory labour.

The Committee further noted that several other provisions of the Criminal Code, which are enforceable with sanctions involving compulsory labour, are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views opposed to the established political, social or economic system, including:

- section 193(1) of the Criminal Code, which provides that persons participating in the activities of unregistered groups may be sentenced to imprisonment, involving compulsory labour;
- section 339 of the Criminal Code, which criminalizes "hooliganism" and "malicious hooliganism" and provides for sanctions of limitation of freedom, deprivation of freedom or imprisonment, all involving compulsory labour; and
- sections 367 and 368 of the Criminal Code, which provide that persons "libelling the President" or "insulting the President" may be sentenced to limitation of freedom or imprisonment, both involving compulsory labour.

The Committee notes the Government's repeated indication in its report that section 15 of the Law on mass events defines responsibility for the infringement of the established procedure for organizing and/or holding mass events, but not for participation in such events. The Government indicates that, according to section 18(8) of the Code of Executive Procedure relating to Administrative Offences, persons subject to administrative detention may be employed with their consent. The Committee also notes the Government's information that, from 2014 to the first six months of 2016, no cases were brought before or examined by the courts under sections 193(1), 342, 367 and 369(2) of the Criminal Code. The Committee further observes the Report of the UN Special Rapporteur on the situation of human rights in Belarus of 21 April 2017 (A/HRC/35/40, paragraph 6) and the Report of the Committee on Political Affairs and Democracy of the Council of Europe of 6 June 2017 (Document 14333, paragraph 30) that law enforcement agents seem to avoid physical attacks and detention during the intervention in public activities and that the authorities act instead by dispensing administrative and financial penalties since 2016, despite the suppression of peaceful social protests in early 2017.

While taking due note of the change in practice in this regard, the Committee must express its **concern** at the unchanged laws that criminalize unregistered or unauthorized public activities, which 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. **The Committee therefore urges the Government to amend or repeal the penal provisions referred to above (sections 193(1), 339, 342, 367, 368 and 369(2) of the Criminal Code), in order to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views ideologically opposed to the established system, for example by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.**

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

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

Observation 2017

Articles 1 and 2 of the Convention. Pay gaps and their causes. Measures to address the remuneration gap. The Committee notes with **interest** the annual publication by the Institute for the Equality of Women and Men (IEFH) since 2007 of the “Report on the pay gap between women and men in Belgium”, which provides a comprehensive overview of the wage situation of men and women, evaluates in detail wage gaps, particularly by economic sector and working time, analyses their causes and makes a number of recommendations to remedy them. According to the 2017 report, the average gross gender wage gap in hourly wage rates was 7.6 per cent in 2014 and the average gross annual gender wage gap was 20.6 per cent. The Committee notes that the report identifies several factors underlying wage gaps, some of which are linked to the situation of women and men in the labour market (occupational segregation – by occupation and sector), while others are related to the personal characteristics of workers (training, work experience, seniority) or the individual (marital status, household composition). The report emphasizes that 48.2 per cent of the wage difference can be explained by known factors; and 51.8 per cent remains unexplained, part of which is due to direct discrimination. The Committee also notes that the report recommends the Government to take the following measures: increase the participation of women in employment; reduce involuntary part-time employment; enhance the capacities of the labour inspectorate with regard to discrimination in enterprises; strengthen the collection and processing of statistical data; improve the balance between professional and family life; continue to encourage the representation of women in decision-making bodies in enterprises (between 2011 and 2016, the proportion of women on executive boards rose from 11 to 28 per cent); and combat occupational segregation, and more specifically, gender stereotypes in education, training and vocational guidance. **In light of the persistent gender wage gap, the Committee asks the Government to provide information on the specific measures taken to address wage inequalities, including on the measures taken with regard to vocational training and guidance to combat prejudice and sexist stereotypes and on measures taken to combat involuntary part-time work.**

Development and application of legislation. The Committee notes the adoption of the Act of 12 July 2013 amending the legislation to combat the gender wage gap, which amends, inter alia, the Act of 22 April 2012 to address the wage gap by adding provisions on the supervision carried out by the General Directorate of Collective Labour Relations with regard to the gender neutrality of the sectoral classifications of jobs, and the adoption of the Order of 17 August 2013 on the same subject. Regarding the measures taken at the enterprise level, the Committee also notes the adoption of two Royal Orders of 25 April 2014 on the report to analyse the pay structure of workers (on the basis of which an action plan can be adopted) and on mediators to combat wage gaps (who can be appointed by the employer in enterprises with over 50 employees). With regard to the implementation of the Act of 22 April 2012 to address the wage gap, the Committee notes with **interest** the creation of a task force comprising members from the IEFH, and the Federal Public Employment, Labour and Social Dialogue Service, which meets several times a year to review the situation, coordinate the various actors and carry out awareness-raising activities, particularly for employers, workers and their respective organizations. The Government indicates that, in February 2015, the task force organized a symposium to present the Act of 2012, which gave rise to great interest. **The Committee requests the Government to provide information on the preparation of the report analysing the pay structure of workers, including on the adoption of the associated action plans, and on the appointment in practice of mediators to combat the wage gap in enterprises, with an indication of the results obtained. It trusts that the Government will take measures to enable the task force to step up its awareness-raising and information activities for the social partners and all persons involved in combating the gender wage gap.**

Articles 2(2)(c) and 3(2). Collective agreements. Revision of job classifications at the sectoral level. Job evaluation. The Committee welcomes the detailed explanations provided by the Government on the process involved in and the results of the first assessment exercise carried out between 2014 and 2015 with the help of an evaluation tool comprising 12 questions based on criteria considered as “good practices” aimed at promoting gender neutrality (objectivity of the system chosen – analytical method; focus on prejudice and gender stereotypes during the process; objectivity of the collection of information on job content, etc.). The Committee notes that, according to the Government, most of the classifications verified were considered to be gender neutral, and for the remaining classifications, the joint committees have a two-year time frame to make the necessary changes. The Government adds that, if corrective action is not taken within the specified time frame and there is no other justified reason, the joint committee in question is placed on a list that is referred to the Ministry of Employment and the IEFH. The Committee recalls that the undervaluation of jobs viewed as “feminine”, and even the lack of recognition, is one of the causes of the persistent gender pay gap. **Emphasizing the importance of reviewing occupational classifications in light of the principle of equality to effectively combat the undervaluation of certain jobs, and thereby to give effect to the principle of equal remuneration for men and women for work of equal value, the Committee requests the Government to continue providing information on the results of the assessment exercises carried out since 2015 in terms of the gender neutrality of classifications, and on the measures taken when assessments have found that classifications are not neutral.**

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

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

Observation 2017

Article 1(1)(a) of the Convention. Discrimination on the basis of sex and/or gender. Sexism, harassment based on sex and sexual harassment. Violence. The Committee notes that in 2015 the Institute for the Equality of Women and Men (IEFH) received 36 reports of sexual harassment (in comparison with six in 2014) and 74 of sexism (in comparison with 58 in 2014). The Committee notes with **interest** the adoption of the Act of 22 May 2014 to combat sexism in public places and amending the Act of 10 May 2007 to combat gender discrimination with a view to criminalizing discrimination. The Committee notes that the Act establishes a prison sentence and/or a fine in the case of discrimination in the field of labour relations. It also welcomes the publication and dissemination by the IEFH of an awareness-raising and information leaflet on this subject. With regard to sex-based harassment and sexual harassment, the Committee also notes with **interest** the adoption of: (i) the Act of 28 February 2014 supplementing the Act of 4 August 1996 on the welfare of workers in the performance of their work in relation to the prevention of psychosocial risks in the workplace, including violence, harassment or sexual harassment at work; and (ii) the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996 on the welfare of workers in the performance of their work, in relation to judicial procedures. These Acts strengthen prevention measures, define the roles of all the stakeholders (employers, workers, line managers, occupational prevention and protection committees, prevention advisers, and trusted persons) and specify the internal procedures available to workers for seeking psychosocial assistance. The Committee welcomes the implementation of a national campaign from 2012 to 2014 for the prevention of all psychosocial risks, the evaluation of which has revealed that its various target populations have acquired a better knowledge of these risks. **The Committee asks the Government to provide information on any measures adopted at the national, regional and enterprise levels under the Acts of 2014 to address and eliminate sexism, sex-based harassment, sexual harassment and violence in employment and occupation, with an indication of the extent to which workers’ and employers’ organizations participate in the formulation and implementation of these measures. The Committee also asks the Government to continue providing information on any complaints or cases of sexual harassment in the workplace handled by the IEFH, the labour inspectorate or the courts, and on the outcome of these complaints.**

Pregnancy and maternity. The Committee notes that the proportion of reported cases of discrimination on grounds of pregnancy have been high for several years and recalls that it asked the Government to take measures to prevent and eliminate this type of discrimination in employment and occupation. The Government reports that, in the context of the supervision of social legislation (labour inspection), pregnancy and/or maternity are rarely the subject of

complaints. However, the Committee notes that, according to the 2016 IEFH interim report, the total number of reports received of discrimination based on sex and/or gender increased again in 2016 (by 18 per cent from 2015), and in particular the number of complaints increased by 49 per cent. The majority of reports are from women (59 per cent) and concern discrimination in employment, and more than a third (39 per cent) of complaints and requests for information in the context of employment received by the IEFH in 2015 were in relation to pregnancy. Furthermore, according to the IEFH study "Pregnancy and maternity at work: Experiences of women candidates and workers and self-employed women in Belgium", three out of four women workers have faced at least one form of discrimination, prejudice, unequal treatment or stress at work as a result of pregnancy or maternity. In this respect, the Committee welcomes the launch in October 2017 by the IEFH of an awareness-raising campaign on discrimination related to pregnancy and maternity, known as "Mum's staying on board", which included the dissemination of an information guide "Pregnancy at work. A guide for women workers and for employers for treatment free of discrimination" and the organization of a study day on the subject in November 2017. **The Committee asks the Government to provide information on the action taken following the findings of the IEFH study "Pregnancy and maternity at work". In view of the scale of the problem, the Committee asks the Government to continue to support and implement practical initiatives to prevent and eliminate discrimination on the basis of pregnancy and maternity, particularly by strengthening labour inspections, and undertaking information and awareness-raising steps for men and women workers, employers, their respective organizations and the general public. The Government is also asked to continue providing information on the cases of discrimination examined by the IEFH, the labour inspectorate and the courts and on the outcome of any court proceedings, identifying the penalties imposed and the compensation awarded.**

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

Observation 2017

Article 3(3) of the Convention. Admission to hazardous work from the age of 16 years. In its previous comments, the Committee noted that section 8 of the Royal Order of 3 May 1999 on the protection of young persons at work (Royal Order of 1999) prohibits the employment of young persons under 18 years of age in the hazardous types of work listed under section 8(2) of the Order, namely work involving exposure to agents that are toxic, carcinogenic, cause hereditary genetic alterations, have harmful effects on the foetus during pregnancy, or cause any other chronic harmful effect on human beings. However, section 10 of the Order provides that "young persons at work", defined as any worker aged between 15 and 18 years who is not subject to full-time compulsory schooling, apprentices, trainees and students (section 2), may perform these types of work under the safety conditions set out in this section.

The Committee noted previously that a new Code on well-being at work was in the process of being adopted and that the new Code would consolidate the royal orders respecting the well-being of workers, including the Royal Order of 1999, which was to be amended to raise the minimum age for young persons to work to 16 years in order to ensure that young persons could perform hazardous types of work only from the age of 16 years. However, the Committee noted that the adoption of the new Code on well-being at work had once again been postponed. The Government indicated that, with a view to meeting the requirements of the Convention, the Directorate-General for the Humanization of Work had prepared a draft royal order amending the Royal Order of 1999, separately from the finalization of the Code on well-being at work, but which would be incorporated into the Code subsequently, so that the Order could be signed and published more rapidly. In particular, the amendment of section 10 of the Order was envisaged with a view to raising the minimum age for young persons to be engaged in hazardous types of work to 16 years.

The Committee notes with **satisfaction** the Government's indication in its report that the Royal Order of 1999 has been amended by the Royal Order of 31 May 2016. In its new wording, section 10(1) of the Royal Order of 1999 provides that young persons at work of 16 years of age or over may perform hazardous types of work under the safety conditions set out in the section, in accordance with *Article 3(3)* of the Convention.

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

Observation 2017

Article 3(2) of the Convention. Determination of hazardous work. 1. *Federation of Bosnia and Herzegovina (FBiH).* The Committee previously noted the Government's statement that it was in the process of adopting a new Labour Law.

The Committee notes the Government's information in its report according to which, pursuant to section 57 of the new Labour Law of the FBiH, an underage person may not be assigned to any physically demanding work, underground or underwater work, or any other work likely to create a hazard or increased risk to their life, health, development or morale, taking into account their mental and physical characteristics. A by-law shall be adopted to define the types of work referred to in section 57. However, the Government indicates that this by-law has not yet been adopted. **The Committee urges the Government to take the necessary steps to ensure, pursuant to section 57 of the new Labour Law, that a list of activities and occupations prohibited for persons below 18 years of age is adopted, in accordance with Article 3(2) of the Convention. It requests that the Government provide information on any progress made in this regard.**

2. *Republika Srpska.* The Committee previously expressed the hope that the Government would take the necessary measures to ensure the inclusion, in the new Labour Law, of a provision authorizing the competent authorities to draw up a list of types of hazardous work prohibited to persons below 18 years of age and to ensure the adoption of such a list.

The Committee notes that section 103(1) of the new Labour Law of Republika Srpska, which entered into force in January 2016, provides that workers younger than 18 years of age may not be assigned jobs that pose an increased risk, or involve physically demanding work, underground or underwater work, or any other activities that may represent an increased risk to their life, health, or physical and psychological development. Pursuant to paragraph 2 of section 103, the activities referred to in paragraph 1 shall be stipulated by the Minister in a regulation. The Committee notes with **satisfaction** that the Regulation on jobs which may not be assigned to juvenile workers was adopted, and entered into force on 18 October 2016.

3. *Brčko District.* Following its previous comments, the Committee notes the Government's information that section 41 of the Labour Law provides that underage persons may not be assigned any dangerous or demanding work, underground or underwater work, or any other work likely to pose a hazard or jeopardize their life, health, or physical development or morale, and that these types of work shall be regulated under collective agreements. The Government further indicates that a new Labour Law for the Brčko District is in the process of adoption, in consultation with the organizations of workers and employers. **The Committee requests that the Government provide information on the progress made in adopting the list of types of work prohibited to children and young persons under 18 years of age, as well as on the types of work prescribed by collective agreements. It once again asks the Government to communicate copies of these lists as soon as they have been determined.**

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

C162 - Asbestos Convention, 1986 (No. 162)

Observation 2017

The Committee notes that the report of the Government is silent on the application of the Convention in the Brčko District. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure that effect is given to each provision of the Convention in the Brčko District.**

Federation of Bosnia and Herzegovina

Articles 3(2), 9, 10, 11, 12 and 15(1) of the Convention. National legislation for the prevention, control and protection of workers against exposure to asbestos. The Committee notes that the Rulebook on Yugoslav standard for maximum allowable concentrations of harmful gases, vapours and aerosols (OG of SFRJ 54/91) prescribes the maximum allowable concentration of asbestos in the atmosphere in the workplace. However, the Government does not indicate if: (a) the national legislation is periodically reviewed in light of the technical progress and advances in scientific knowledge; (b) the national legislation provides that the exposure to asbestos shall be prevented or controlled by prescribing adequate engineering controls and work practices and/or by prescribing special rules and procedures for the use of asbestos; (c) the national legislation provides for the replacement or total or partial prohibition of asbestos, where necessary to protect the health of workers and technically practicable; (d) the use of crocidolite is prohibited; or (e) the spraying of asbestos is prohibited. **The Committee requests the Government to provide information in this respect with regard to the Federation of Bosnia and Herzegovina (BiH).**

Articles 15(4) and 18. Protective equipment and work clothing. The Committee notes the Government's indication that, pursuant to section 8 of the Law on Occupational Safety and Health (OG 22/90), the employer is required to provide personal protective equipment to workers if the danger and hazards to which they are exposed cannot be otherwise eliminated. However, the Government does not indicate if: (a) the handling and cleaning of used work and special protective clothing is carried out under controlled conditions; (b) national legislation prohibits the taking home of work and special protective clothing and of personal protective equipment; (c) the employer is responsible for the cleaning, maintenance and storage of work clothing, special protective clothing and personal protective equipment; (d) the employer provides facilities for workers exposed to asbestos to wash, take a bath or shower at the workplace; or (e) the employer provides, maintains and replaces adequate respiratory protective equipment and special protective clothing at no cost to the workers. **The Committee requests the Government to provide information on the measures taken in this respect in the Federation of BiH.**

Republika Srpska

Article 17. Demolition of plants and structures and removal of asbestos. The Committee notes the Government's indication that in the Republika Srpska there are no specialized companies for performing the demolition of plants and structures in which asbestos fibres are present, nor does the legislation provide for special requirements for this type of work. **The Committee requests the Government to take the necessary measures to ensure that the demolition of plants or structures containing friable asbestos insulation materials, and removal of asbestos from buildings or structures in which asbestos is liable to become airborne, are undertaken only by employers or contractors who are recognized by the competent authority as qualified to carry out such work and who have been empowered to undertake such work in the Republika Srpska.**

Issues common to the Federation of BiH and the Republika Srpska

Article 15(2). Periodic review and update of limits for the exposure of workers to asbestos. The Committee notes that the Government does not indicate if the exposure limits for the maximum allowable concentration of asbestos in the atmosphere of working premises established in the Rulebook on Yugoslav standard for maximum allowable concentrations of harmful gases, vapours and aerosols (OG of SFRJ 54/91) are periodically reviewed and updated in light of technological progress and advances in technological and scientific knowledge. **The Committee requests the Government to provide information in this respect with regard to the Republika Srpska and the Federation of BiH.**

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Observation 2017

The Committee notes the observations made by the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB) received on 1 September 2016.

The Committee requests the Government to provide its comments in this respect.

Article 2 of the Convention. Insertion of labour clauses in public contracts. In its previous comments, the Committee asked the Government to take without further delay all necessary action in order to give full effect to the Convention and to keep the Office informed of any progress made in this regard. In this context, the Committee takes note with *interest* of the adoption of the new Public Procurement Act (PPA), which entered into force on 15 April 2016. In its observations, the CITUB indicates that the PPA seeks to establish a new regulatory framework aligned with the EU Directive 2014/24/EC on public procurement. The CITUB adds that it participated actively in the discussions on the draft PPA and expresses its satisfaction with the text adopted, which it considers to be in conformity with the provisions of the Convention. The Government indicates that the PPA aims to increase the efficiency of public spending as well as to use public procurement to support common goals of a public nature, including implementation of labour law measures. The Committee notes the Government's statement that section 115 of the PPA requires contractors and their subcontractors to observe all applicable rules and requirements, related to environment protection, social and labour law, applicable collective agreements and provisions of international environmental, social and labour law listed in Annex 10 and section 107(2) of the PPA. Moreover, the Government indicates that, according to section 47(1)–(3) of the PPA, the contracting authorities are entitled to include specific conditions for implementing the contract relating to employment protection and working conditions in force in the country. The Committee notes that contracting authorities are not merely entitled to include labour clauses in public contracts, but that this is the central obligation under *Article 2* of the Convention. In its General Survey concerning Labour Clauses in Public Contracts, 2008, paragraph 40, the Committee stated that “the essential purpose of Convention No. 94 and Recommendation No. 84 is to ensure that workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts.” The Committee takes notes of the Government's indications regarding section 32 of the PPA, which stipulates that contracting authorities shall provide unlimited, complete, free and direct access through electronic media to the documentation for public procurements. With regard to the obligation of ensuring effective enforcement through a system of inspection and adequate sanctions, the Government indicates that, according to section 175(5) of the PPA, the contracting authority is entitled to reject subcontractors if they do not meet the selection criteria specified in the notice and documentation, including the requirements relating to labour law. In its observations, the CITUB notes that the PPA guarantees that candidates who have infringed the provisions of the labour law relating to wages in implementing a public contract will be excluded from public procurement procedures. It expresses its concern that the PPA does not apply the same requirements to subcontractors as to contractors, and that therefore workers employed by subcontractors may not have sufficient protection of their salary and contributions. **The Committee requests the Government to indicate the manner in which it is ensured that labour clauses of the type specified in Article 2 of the Convention are contained in all public contracts falling within the scope of Article 1 of the Convention and that they ensure to the workers of contractors or subcontractors payment of wages and other working conditions not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. The Committee requests the Government to transmit copies of standard bidding documents currently in use. It also requests the Government to indicate the measures taken to ensure the posting of notices in conspicuous places at the workplace with a view to informing the workers of their conditions of work.**

Application of the Convention in practice. Labour inspection. **The Committee requests the Government to provide information on the manner in which the Convention is applied, including statistics on the number of inspections, the number and type of infractions detected and the sanctions applied.**

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*Observation 2017*

The Committee notes with **concern** that the Government's report has not been received.

In its previous comments, the Committee requested the Government to provide comments on 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 (NHS) received on 31 August 2016, and of the Association of Croatian Trade Unions (MATICA) received on 14 October 2016, as well as those received from the ITUC on 1 September 2014. **The Committee requests the Government once again to provide a reply to the abovementioned observations, including on legislative matters and specific allegations of violations of the Convention in practice.**

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Rapid appeal procedures. Having previously noted the allegations of excessive court delays in dealing with cases of anti-union discrimination and the Government's information on a comprehensive process of judicial reform, the Committee had requested 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. **In the absence of any new information in this regard, the Committee reiterates its previous request.**

Articles 4 and 6. Promotion of collective bargaining in the public sector. In its previous comments, having noted that the Trade Union of State and Local Government Employees of Croatia (SDLSN) criticized the existing collective bargaining system for determination of the wage formation basis of civil servants in local and regional self-government units, the Committee had recalled that special modalities for collective bargaining in the public service, in particular as regards wage clauses and other clauses with budgetary implications, were compatible with the Convention, and had invited 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. **The Committee requests the Government to provide information on any progress made in this regard.**

The Committee had previously noted the allegations that the Act on the Realization of the State Budget, 1993, allowed the Government to modify the substance of collective agreements in the public sector for financial reasons. The Committee had also observed that the law was no longer in force and that it was standard procedure to adopt annually an Act on the Realization of the State Budget. Underlining 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, the Committee had requested the Government to provide a copy of the Act on the Realization of the State Budget of the Republic of Croatia for 2014. **The Committee requests the Government to provide the latest Act on the Realization of the State Budget.**

The Committee hopes that the Government will make every effort to take the necessary action with regard to the issues raised in the present comment in the near future.

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

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)*Observation 2017*

The Committee notes with **regret** that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments initially made in 2012. The Committee also notes that the Government had been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

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.

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

Observation 2017

Articles 1 and 2 of the Convention. Employment policy measures. The Committee notes that, since 2014, the situation in the labour market has been steadily improving. In 2013, the Government approved the 2014–20 Regional Development Strategy as an instrument for coordinating public policies with an impact on regional development, including the national employment policy (NEP). In light of the aim of the Ministry of Labour and Social Affairs (MoLSA) to remove some persistent structural mismatches in the labour market, an analysis of supply and demand in the labour market was prepared and approved by the Government in 2016. The analysis included a set of measures to eliminate disproportions in the Czech labour market aimed, inter alia, at increasing the motivation of the workforce to enter employment. The Government indicates several Labour Law amendments implemented in 2015, 2016 and 2017. The Committee notes with *interest* a series of amendments aimed at promoting the employment of persons with disabilities, disadvantaged people or people at risk in the labour market through projects implemented, inter alia, by the Fund for Further Education. The Committee also notes that an active employment policy instrument was introduced in the form of a contribution while working under short-time working schemes (the so-called "kurzarbeit") and that in 2017, there were adjustments in the field of employment facilitation by employment agencies programmes. Furthermore, in 2015, the Government introduced an attractive investment environment in the Czech Republic providing investment incentives to investors for the creation of new jobs and retraining or training of employees. The Government indicates that funds from the European Social Fund have been allocated to projects aiming to increase employment and employability of the workforce. Several projects implemented within the framework of the Operational Programme Human Resources and Employment (OP HRE) for the 2007–13 programming period were completed in 2015 and the final evaluation reports were approved in 2016. The OP HRE focused on reducing unemployment through an active job market policy and provision of professional training, promoting employment and workforce adaptability and mobility, integrating young people, socially excluded and disadvantaged people into the labour market, promoting gender equality in all aspects of employment, improving the quality of education and vocational training, and improving the quality of public administration and international cooperation in the mentioned areas. The implementation of projects under the Operational Programme Employment (OPE) for the 2014–20 programming period is gradually gaining momentum. In 2016, 6,866,805,000 Czech Republic koruna (CZK) was spent on the active employment policy (AEP) and 74,289 persons (job seekers, employees and self-employed persons) were supported. The most used instruments were socially beneficial jobs, retraining and community service. To assess the impact of the AEP measures and establish an ongoing monitoring system to gauge their effectiveness, the MoLSA has initiated the project "Evaluating the Efficiency and Effectiveness of the AEP Implementation". **The Committee requests the Government to provide updated information on the impact and effectiveness of the AEP measures implemented on increasing employment and reducing unemployment, and specifically on the impact of the projects implemented under the OPE for 2014–20. The Committee also requests the Government to provide information on the evaluation of the AEP implementation.**

Employment trends. The Committee takes note of the detailed labour market statistics provided by the Government for 2014–17. Following positive growth in economic development in 2014 and 2015, GDP growth dropped to 2.4 per cent in 2016, a slowdown related, inter alia, to a mismatch between supply and demand in the labour market due to the large increase in the number of reported job vacancies and the significant drop in the number of jobseekers. Between 2014 and 2016, there was an absolute increase in employment, due to growth in the tertiary and secondary education sectors. Employment growth accelerated to 1.9 per cent in 2016. The employment rate reached 58.2 per cent in the second quarter of 2017 according to the data provided by the Czech Statistical Office. Moreover, the general unemployment rate was 3 per cent in 2017. The increase in employment was mainly due to the increased participation of women. In 2016, the share of men in the labour force fell to 56 per cent, and the share of women increased to 44 per cent. The Committee notes with *interest* the decline in unemployment among groups of people who are at a disadvantage, including due to health status, age, lack of experience or insufficient education. With respect to young persons under 25, according to the ILOSTAT database, in 2016 the youth labour force participation rate was 32 per cent. However, the proportion of people aged 50 and above, people with disabilities or people with the lowest levels of education is increasing among the unemployed. **The Committee requests the Government to continue to provide statistical data concerning the size and distribution of the labour force, the nature and extent of employment, unemployment and underemployment.**

Education and training policies and programmes. The Government indicates that the amended Education Act aims to improve cooperation between secondary vocational schools and employers to prepare students for the transition to work. In this context, the Government promotes the involvement of professionals in schools and provides incentives to employers to cooperate with schools by providing them tax relief when they demonstrably participate in cooperation agreements with schools to provide training. In line with new measures for the promotion of vocational training, the Government recommends ensuring a unified procedure for concluding a contractual relationship between an employer and a secondary school student or a student of a higher vocational school who is being prepared for work. The Government has also modified final examination requirements to allow a mandatory single final examination in certain fields where accompanied with a certificate of apprenticeship. The Government indicates that experimental verification of the multi-tiered education model and completion of education will take place from the school year 2016–17 until the school year 2022–23. The results of the experimental verification will be used to modify the framework of educational programmes in selected fields of education. **The Committee requests the Government to continue to provide information on the impact of education and training policies and programmes on the employment opportunities on workers, including young people.**

Business development. The Government indicates that in the framework of the Operational Program Enterprise and Innovation 2007–13 (OPEI), a total of 41,470 jobs were created by the end of 2015, with the share of women standing at 30.8 per cent. Of those, 6,073 jobs were created in research and development. The Operational Program on Entrepreneurship and Innovation for Competitiveness 2014–20 is being implemented in the new programming period. **The Committee requests the Government to continue to provide information on the impact of business development measures on employment creation.**

Article 3. Consultations with the social partners. The Government indicates that the focus of the active employment policy is regularly discussed on a tripartite basis. At the national level, from September 2011 to October 2014, the Plenary Session of the Council of Economic and Social Agreement met several times and discussed various employment-related issues. At the regional level, to ensure cooperation in the labour market, the Public Employment Service establishes advisory councils which meet at least twice a year and are composed primarily of representatives of trade unions, employers' organizations, cooperative bodies, organizations of persons with disabilities, the Czech Chamber of Commerce and self-governing territorial units. The purpose of each of these advisory councils is to coordinate the implementation of the employment policy and human resource development in the respective administrative districts. Furthermore, the social partners are involved in the Labour Market Predictions project (KOMPAS), launched on 1 January 2017 to build a comprehensive system capable of predicting developments in the labour market in future years. **The Committee requests the Government to continue to include information on the involvement of the social partners, in accordance with Article 3 of the Convention, which requires their views and experiences to be fully taken into account when designing and implementing an active employment policy and to include indications in its next report on the manner in which consultations held in the Council of Economic and Social Agreement and the advisory bodies have contributed to the implementation and coordination of an active employment policy.**

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*Observation 2017*

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comment, the Committee requested the Government to keep the Office informed of any developments, particularly in terms of legislation, with regard to the application of the Convention at the national level. The Committee notes that the Government has adopted several legislative texts to transpose European Directives on public procurement (European Directives 2014/24/EU and 2014/25/EU) and concession contracts (European Directive 2014/23/EU). The Government indicates in its report that Ordinances Nos 2015-899 of 23 July 2015 on public procurement and 2016-65 of 29 January 2016 on concession contracts, and their implementing decrees, constitute progress towards compliance with labour standards by holders of public contracts and their subcontractors. The Government adds, however, that these new provisions are not sufficient to give full effect to the obligations of the Convention, for the same reasons as those indicated in its previous reports. It points out that it is impossible to amend these rules to bring them into conformity with the obligations of the Convention, unless measures are adopted that are contrary to the law of the European Union. For example, the new legislative texts did not reintroduce measures that would require the formal insertion of labour clauses in public contracts. The Government specifies, however, that French domestic positive law provides for similar obligations offering sufficient protection which is comparable to that established by the Convention. In its General Survey of 2008 concerning labour clauses (public contracts), paragraph 40, the Committee recalled that the essential purpose of the Convention and its Recommendation is to ensure that the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. This has the effect of setting as minimum conditions for the contract standards that are already established within the locality. Labour costs are thus removed from competition between bidders. The further aim is that local standards higher than those of general application should be applied, where they exist. In its previous comment, the Committee emphasized that *Article 2(1)(a)* of the Convention refers to all the collective agreements concluded between employers' and workers' organizations representing a substantial proportion of employers and workers in the trade or industry concerned, and not only collective agreements that have been extended. The Government indicates in this regard that the compliance with collective agreements that have not been extended cannot be imposed on all public contract holders and subcontractors. Only the implementation of collective agreements declared to be of general application, following the adoption of an extension order, can be required of subcontractors that are not domiciled in France. Furthermore, the Government recalls that the Court of Justice of the European Union has found that national legislation cannot require public procurement contractors and their subcontractors to respect the provisions of collective agreements when they have not been declared of general application. The Committee once again recalls that the fundamental requirement of *Article 2* of the Convention is that public contracts to which the Convention applies must include clauses ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried out. The Convention provides that these clauses may be established by collective agreement, arbitration award or national legislation. Article 18(2) of Directive 2014/24/EU provides, with regard to the principles of procurement, that "Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X". The Committee observes that the eight fundamental ILO Conventions are listed in the Annex. In box 5 of its 2008 General Survey, the Committee emphasized that the ILO Declaration of 1998 on Fundamental Principles and Rights at Work and the Convention proceed along parallel lines and emphasized the complementarity of the two sets of principles and the importance of the Convention as a possible mechanism for promoting core labour standards. Furthermore, the Committee observes that the Court of Justice of the European Union found in 2015 that the European Directives do not prevent the exclusion from public procurement of bidders who do not undertake to pay minimum wages to the workers concerned. Moreover, the Committee observes that, as noted by the European Committee of the Regions in Opinion No. 2016/C 051/04 on standards of remuneration in employment in the European Union, an interpretation of legislative texts transposing European Directives allowing for the unequal treatment of bidders could lead to social dumping. **The Committee once again requests the Government to continue providing more detailed information on any legislative changes that could have an impact and the application in practice of the Convention at the national level. It also requests the Government to provide a copy of any court decision or official publication involving questions of principle related to the application of the Convention.**

C097 - Migration for Employment Convention (Revised), 1949 (No. 97)*Observation 2017*

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

Article 3 of the Convention. Measures to combat misleading propaganda regarding immigration. In its previous comments, the Committee requested the Government to provide information on the measures taken, in cooperation with the social partners and, where appropriate, other relevant stakeholders, to prevent and combat prejudices regarding immigration and the stigmatization and stereotyping of migrant workers, including the Roma population, in an effective manner, and to provide information on the results achieved. The Committee notes the general nature of the Government's reply in its report, in which it reiterates its previous indications that the measures to combat misleading propaganda include legislative and practical measures to combat racism and xenophobia and measures against the trafficking of women. It also notes the Government's indication that there is strict equality of treatment between migrant workers and national employed persons. The Committee recalls that, under the terms of *Article 3*, each Member for which the Convention is in force undertakes to take all appropriate steps against misleading propaganda relating to emigration and immigration. These measures must not only concern misleading information targeting migrant workers, but also the national population, such as targeted measures to combat social and cultural prejudices which aggravate discrimination against migrants (see the 2016 General Survey on migrant workers). **The Committee once again requests the Government to indicate in detail the measures adopted, in cooperation with the social partners and, where appropriate, other relevant stakeholders, to prevent and combat prejudices in an effective manner regarding emigration and immigration and the stigmatization and stereotyping of migrant workers, which have an effect in practice on the effective application of the principle of equal treatment, and to provide information on the results achieved.**

Article 6. Equality of treatment. The Committee notes the main elements of Government policy on labour migration which, in the view of the Government, is targeted as a priority at international enterprises and skilled workers, and workers with a high potential to respond to the needs of the labour market and the structural needs of enterprises faced with an internationalized labour market, while at the same time protecting employed persons who are already in France. **Noting that Article 6 does not distinguish between the treatment of different categories of migrant workers and that, in practice, migrant workers who are already on the national territory are mainly engaged in low paid sectors with difficult working conditions (principally cleaning, catering, security and construction), the Committee reiterates its request to the Government to provide full information on the relevant legal provisions applying no less favourable treatment to migrant workers than that which applies to nationals with respect to the matters enumerated in Article 6(1)(a) to (d) of the Convention, with an indication of any differences that may exist between the various categories of immigrant workers ("employee", "employee on assignment", "European Blue Card", "skills and talent", "scientific", "temporary worker", and "seasonal worker"). The Committee also requests information on the application in practice of this provision and requests the Government to include information on any complaints made to the**

competent authorities, such as the labour inspectorate, but also the Rights Ombud and the courts, or any other competent body, by migrant workers who consider that they are victims of discrimination in employment with a view to the application of the national legislation relating to the Convention.

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.

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

Observation 2017

Gender pay gap. The Committee notes that, according to the key statistics on equality between men and women (2017), the average annual net wages of women working full time were 18.6 per cent lower than those of men in the private sector and in public enterprises in 2014 (20.1 per cent in 2009). The Committee also notes the Government's indication that, where characteristics of salaries and posts are identical, there is an unexplained gap of 9.8 per cent.

The Committee requests the Government to continue providing information on the gender pay gap in different sectors of the economy.

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes with **interest** the adoption of Act No. 2014-873 of 4 August 2014 on substantive equality between women and men which sets out, in particular, that the gender equality policy should include actions aimed at guaranteeing equality in employment and remuneration, and lays down the obligation for the employer to hold annual negotiations on, inter alia, the definition and the programming of measures to eliminate the gender pay gap. The Committee also notes that the sanctions mechanism, in the event of non-compliance with the provisions on equal pay, which was implemented by Act No. 2010-1330 of 9 November 2010 on pension reform, was amended by Act No. 2015-1702 of 21 December 2015 on the financing of social security for 2016, in particular with regard to the amount of the sanctions. **The Committee asks the Government to provide information on the implementation of the obligation to negotiate measures each year to eliminate the wage gaps, envisaged by the Act of 2014, and on the results achieved, and to provide information on the functioning of the new sanctions mechanism, by indicating the number of inspections conducted and enterprises concerned, as well as the amount of the sanctions applied in the case of non-compliance. It also requests the Government to provide information on any new legislative or administrative measures adopted in relation to equal pay between men and women within the framework of the current labour law reform.**

Application of the principle of equal pay in the civil service. While noting that the Government's report is silent on this question, the Committee welcomes the Prime Minister's report of 27 December 2016 entitled "The strength of equality: Wage inequality and career paths of women and men in the civil service", which highlights the importance of the concept of "work of equal value" in the implementation of wage equality between men and women. The Committee notes that this report contains over 50 recommendations to, inter alia, re-evaluate in financial terms female-dominated occupations and specializations which are undervalued in terms of the same functions and constraints; establish gender neutral evaluation criteria and strengthen training for those who carry out these evaluations; design a common employment portal for the whole of the civil service and systematically list the pay conditions for the post in question; conduct experiments regarding transparency of remuneration in any given administration; create an online evaluation tool on expected remuneration; establish a fund for the revenue from fines collected in cases of non-compliance with the obligations to maintain gender balance in appointments; identify and amend regulatory texts that do not comply with the principle of gender neutrality in the designation of civil service occupations. **The Committee asks the Government to provide information on the follow-up given to the above recommendations of the report and on any measures taken to implement the principle of equal pay between men and women for work of equal value and effectively combat wage inequalities based on sex in the civil service.**

Article 3. Objective job evaluation. Development or revision of job classifications. The Committee notes with **interest** the publication of two guides on objective job evaluation which emphasize the importance of the concept of "work of equal value" to effectively combat the gender wage gap: the guide on a non-discriminatory evaluation of female-dominated jobs, published in 2013 by the Defender of Rights, which develops and explains the objective evaluation process; and the guide on taking gender equality into account in the classification systems, published in 2017 by the Higher Council on Occupational Equality (CSEP), following work by the joint working group on classifications. One of the main objectives of these practical guides is to show that apparently neutral methods of classification can be discriminatory owing to, for example, the selection or omission of certain criteria, and the over- or under-evaluation of certain factors. These tools explain the different stages of the job evaluation process and provide specific examples of objective job evaluation processes carried out in various countries. The Committee also notes that Act No. 2014-873 of 4 August 2014 on substantive equality between men and women has entrusted the CSEP and the National Collective Bargaining Commission with a new mission concerning follow-up to the revision of occupational classifications and the analysis of the negotiations held and good practices. The Committee also notes that the action platform for occupational gender balance set up in 2014 provides that, during the five-yearly review of classifications at the sectoral level, when an average gender wage gap is detected, the social partners shall analyse, identify and rectify the evaluation criteria for posts which may lead to discrimination. **Recalling that the implementation of the concept of "work of equal value" involves the adoption of a method based on objective criteria and free from gender bias to measure and compare the relative value of different jobs, the Committee requests the Government to provide information on the distribution of the practical guides among workers' and employers' organizations, administrative services and the persons or bodies tasked with carrying out the objective job evaluations, particularly with a view to developing or revising job classifications. It also asks the Government to provide information on any revision of job classifications that are being undertaken or already carried out, the results achieved and the difficulties encountered.**

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

Observation 2017

Articles 1(1)(a) and (b), and 2 of the Convention. Prohibited grounds of discrimination. Legislative developments. The Committee notes with **interest** that the list of grounds of discrimination prohibited by the Labour Code (section L.1132-1) has been extended following the adoption of: (i) Act No. 2014-173 of 21 February 2014 on urban planning; (ii) Act No. 2016-832 of 24 June 2016 on combating discrimination based on social precarity; (iii) Act No. 2016-1547 of 18 November 2016 on modernizing the judiciary in the twenty first century; (iv) Act No. 2017-86 of 27 January 2017 on equality and citizenship; and (v) Act No. 2017-256 of 28 February 2017 on planning for substantive equality overseas and issuing other social and economic provisions. This list now includes the following grounds: origin; sex; customs; sexual orientation; gender identity [in place of "sexual identity"]; age; family situation or pregnancy; genetic characteristics; particular vulnerability resulting from an economic situation that is apparent or known to the author of discrimination [new]; real or perceived, of an ethnicity, nationality or race [in place of "race"]; political opinions; trade union or mutual association activities; religious beliefs; physical appearance; family name; place of residence [new] or location of a person's bank [new]; state of health; loss of autonomy [new] or disability; and ability to express oneself in a language other than French [new].

The Committee nevertheless notes that "social origin", is still not included among the grounds of discrimination that are prohibited by law, as according to the Government's previous statements, the term "origin" in section L.1132-1 of the Labour Code covers "national extraction" within the meaning of the Convention. The Committee recalls that social origin is one of the seven prohibited grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention. It also recalls

that, as it noted in the General Survey on the fundamental Conventions, 2012, paragraphs 802–804, in certain countries, persons emanating from certain geographical areas or from certain socially disadvantaged segments of the population (other than persons with an ethnic minority background) face exclusions with respect to recruitment, without any consideration of their individual merits. Indications regarding the rise in social inequalities in some countries have highlighted the continuing relevance of addressing discrimination based on class and socio-occupational categories. In this respect, the Committee recalls that discrimination and lack of equal opportunities based on social origin refers to situations in which an individual's membership of a class, socio occupational category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs. **Recalling that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all of the grounds of discrimination specified in Article 1(1)(a) of the Convention, the Committee asks the Government to take the necessary steps to ensure that "social origin" is included among the grounds of discrimination that are prohibited by the Labour Code when it is next revised, and to provide information on any steps taken in this regard. It also asks the Government to provide information on the application in practice and the interpretation, in particular by the labour inspectorate and the courts, of the provisions relating to discrimination on the basis of "particular vulnerability resulting from an economic situation apparent or known to the author" of discrimination, "ability to express oneself in a language other than French", place of residence, locations of a person's bank or loss of autonomy.**

Article 1(1)(a). Discrimination on the basis of sex. Definition and prohibition of sexist behaviour. Legislation. The Committee welcomes the provisions of Act No. 2015-994 of 17 August 2015 on social dialogue and employment, which amend the Labour Code (section L.1142-2-1) and prohibit "any act related to a person's sex, which has the object or effect of threatening his or her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment", as well as the provisions of Act No. 2016-1088 of 8 August 2016 on work, the modernization of social dialogue and the security of vocational paths, which introduce the same prohibition into Act No. 83-634 of 13 July 1983 on the rights and obligations of civil servants. **The Committee asks the Government to provide information on the application of the Act of 2015, in particular on the manner in which the labour inspectorate and the courts deal with sexist acts in the workplace, and on the application of the Act of 2016 in relation to civil servants. It also asks the Government to provide information on the implementation of the Plan of Action and Mobilization to Combat Sexism launched in September 2016, including the specific action taken in the area of employment and occupation in the public and private sectors.**

Sexual harassment. Overseas departments. **The Committee notes with regret that, despite its repeated requests, the Government has still not provided any information on the application of the Convention in French Guiana and Reunion, and once again asks that the Government provide specific information on any measures adopted by the authorities, employers and labour inspectors to prevent and eliminate sexual harassment at work, as well as information on any cases of sexual harassment dealt with by the courts in the overseas departments.**

Discrimination on the basis of race, colour or national extraction. For several years, the Committee has been emphasizing that, despite certain initiatives, the measures introduced do not appear to be producing sufficient results to effectively combat discrimination on the basis of race or national extraction ("origin" under the terms of the national legislation) in employment and occupation, particularly with regard to access to employment for young persons of foreign origin, and has asked the Government to step up its efforts in this regard. In this connection, the Committee welcomes the test conducted by the Ministry of Labour on discrimination in the hiring processes of some 40 enterprises with over 1,000 employees, the findings of which were published in December 2016 and show that in a dozen enterprises, applicants with names of north African origin suffered discrimination as compared to applicants with names of French origin. It also notes that the Ministry has referred two enterprises to the Defender of Rights and that it encourages enterprises to sign the "pact for equal treatment of applicants in access to employment, irrespective of their origins – commitment by enterprises" which calls for awareness raising among recruiters, the sharing of good practices, as well as the valuing of skills beyond diplomas and qualifications. The Committee notes the adoption of the National Plan to Combat Racism and Anti-Semitism 2015–17, which envisages, inter alia, communication and awareness-raising campaigns, the mobilization of civil society, a review of local citizenship policies and the creation of operational bodies at the local level, the strengthening of penalties and education in this area and the improvement of victim protection. **While encouraging the Government to continue its tests of workplaces and its initiatives to disseminate information and raise awareness among workers, employers and society in general, the Committee asks the Government to provide information on all the steps taken to effectively combat discrimination on the basis of race, colour and national extraction in recruitment, promotion and conditions of employment, including wages. It also asks the Government to identify the measures adopted to implement the National Plan to Combat Racism and Anti-Semitism 2015–17 in the area of employment, as well as information on the steps taken to evaluate its effectiveness and on the specific results achieved.**

Roma. The Committee notes with **regret** that the Government's report does not contain any information in its response to its requests concerning the situation of the Roma in relation to equal access to education, vocational training and employment. It nevertheless notes that evictions of settlements have been carried out and that the United Nations Human Rights Committee has expressed its concern at the fact that the Roma migrants face rejection, exclusion and violence (CCPR/C/FRA/CO/5, 17 August 2015, paragraph 13). **Referring to its previous comments, the Committee once again urges the Government to take, in collaboration with the organizations representing the Roma, effective steps to combat discrimination against and stigmatization of the Roma and to promote respect and tolerance, and to provide information on any measures taken in this regard. The Committee also asks the Government to provide information on the following:**

- (i) the specific measures taken to ensure the school enrolment and retention at school of Roma children as well as vocational training for young persons and adults; and**
- (ii) the impact of the extension of the list of occupations accessible to Romanian and Bulgarian nationals in relation to the access to employment, including self-employment, of members of the Roman community.**

Articles 1 and 2. Measures to combat discrimination and to promote equality in employment and occupation. The Committee notes with **interest** the establishment, in September 2014, of a dialogue group on combating discrimination in enterprises, which brought together the social partners, private and public employment intermediaries, the competent services of the ministries concerned and eminent persons, to identify ways to more effectively reduce cases of discrimination against groups of people in workplaces while strengthening legal certainty and promote non-discriminatory methods of recruitment. The Committee notes that the dialogue group put forward 18 proposals in May 2015, which included: the possibility of implementing a similar approach in the public sector; the organization of an awareness-raising campaign; the mobilization of labour inspection services on this issue; the dissemination of information on non-discriminatory methods of recruitment; the establishment in enterprises with over 300 employees of an "equality of opportunity" focal point; the improvement of the "testing" method and the distribution in workplaces of a document containing the principles of the national inter-occupational agreement of 12 October 2006 on diversity in workplaces. The Committee also notes that 13 new proposals were formulated by the dialogue group in November 2016, which included: the organization of an annual information campaign; the conducting of studies to evaluate progress at the enterprise level arising from the implementation of an anti-discrimination policy and to examine the conditions for the development of indicators designed to measure the impact of anti-discrimination measures; the continuation of the work of the dialogue group on the implementation of operational measures to ensure the traceability and transparency of recruitment procedures; the establishment of focal points; and the development of indicators to monitor career and pay development. **Welcoming the work of the dialogue group to combat discrimination in workplaces, the Committee asks the Government to identify the actions taken on the proposals made in 2015 and 2016, both in terms of the legislation and in practice, and to specify whether the dialogue group is expected to continue its work and, if so, to provide information on its work and on any initiative of this type in the public sector.**

France

National policy on equality of opportunity and treatment between men and women. The Committee notes with **interest** the adoption of Act No. 2014-873 of 4 August 2014 on substantive equality between women and men which provides for the implementation of a policy of equality between women and men that includes, in particular, preventive and protective action to combat violence against women and attacks on their dignity, action to prevent and combat sexist stereotypes and to guarantee occupational and wage equality and gender balance in occupations, as well as action to promote a better work–life balance and a balanced distribution of parental responsibilities. The Act of 2014 also requires that these actions are evaluated. Moreover, the Committee welcomes the establishment of the High Council for Equality between Women and Men by Act No. 2008-496 of 27 May 2008 issuing various provisions to adapt national legislation to community law in the field of combating discrimination, as a result of amendments introduced by Act No. 2017-86 of 27 January 2017 on equality and citizenship. It notes that the High Council is, inter alia, responsible for formulating recommendations and opinions, proposing reforms to the Prime Minister, contributing to the evaluation of public policies on women’s rights and equality between women and men in every area of social life and submitting an annual report on the state of sexism in France which is published. The Committee also notes that the High Council published a report in February 2017 on training on equality between girls and boys, recommending initial and further training for educational personnel and the development of a practical guide. The Committee welcomes the Government’s commitment to making gender equality and non-discrimination, with a focus on sexual and gender-related violence, a high priority and a national cause for 2017–22. **The Committee asks the Government to provide information on the steps taken in the area of employment to implement the policy for equality between women and men, in particular in relation to combating sexist stereotypes and promoting gender balance in occupations, and on any impact assessment in respect of the same. The Committee also asks the Government to provide information on the activities of the High Council for Equality between Women and Men in the area of employment and work.**

Discrimination on the basis of religion. **In the absence of information on this matter in the Government’s report, the Committee reiterates its request for information on the application in practice of Act No. 2010-1192 of 11 October 2010 prohibiting faces being covered in public places in relation to employment, taking into account its possible effects on the employment of Muslim women. It asks the Government to indicate whether any steps are envisaged to evaluate the impact of this Act and, if so, whether they have been taken.**

Enforcement by the courts. Legislative developments. The Committee notes with **interest** the provisions of Act No. 2016-1547 of 18 November 2016 on modernizing the judiciary in the twenty-first century, which allows for representative workers’ organizations and associations to bring group actions when several persons who are in a similar situation are subjected to direct or indirect discrimination on the same grounds and by the same person or enterprise. A group action may seek, initially, to bring an end to the discrimination and then to obtain compensation for any harm suffered. **The Committee asks the Government to provide information on the taking of group actions in relation to discrimination in employment and, where applicable, on any evaluation of this mechanism.**

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

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*Observation 2017*

The Committee takes due note of the Government's reply to the observations of the International Trade Union Confederation (ITUC), Education International (EI), the Educators Scientists Free Trade Union of Georgia (ESFTUG) and the Georgian Trade Union Confederation (GTUC) received respectively on 1, 17 and 29 September 2014 and referring to the issues raised by the Committee below. The Committee further takes note of the observations of the ITUC and the GTUC received on 4 September 2017 referring to the alleged use of force by the authorities during a peaceful protest and the Government's reply thereon.

Article 2 of the Convention. Minimum membership requirement. In its previous comments, the Committee had welcomed the amendment of section 2(9) of the Law on Trade Unions so as to lower the minimum membership requirement for establishing a trade union from 100 to 50. The Committee had requested the Government to review, in consultation with the most representative workers' and employers' organizations, the impact of the amendment in practice and to take steps for its amendment if it is found that the new minimum number required still hinders the establishment of trade unions in small and medium-sized enterprises. The Committee notes the Government's indication that the consultations concerning section 2(9) of the Law on Trade Unions have started and the result of it will be transmitted to the Tripartite Social Partnership Commission for decision, which will be then transmitted to the Committee. **The Committee hopes that the Government will pursue, in consultation with the social partners, its efforts in assessing the impact of the amendment of section 2(9) of the Law on Trade Unions and will take the necessary measures for its amendment in the near future if it is found that the new minimum number required still hinders the establishment of trade unions in small and medium-sized enterprises. The Committee requests the Government to supply information on all progress made in this respect.**

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

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*Observation 2017*

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 and the observations of the Georgian Trade Union Confederation (GTUC) received on 4 September 2017 containing allegations of acts of anti-union discrimination and violation of the right to bargain collectively, as well as the Government's reply thereon. The Committee also takes note of the Government's reply to the observations provided by the ITUC in 2015 and 2016 and to the observations provided by Education International (EI), the Educators Scientists Free Trade Union of Georgia (ESFTUG) and the GTUC received in 2014.

Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee had noted that according to section 5(8) of the Labour Code, an employer was not required to substantiate their decision for not recruiting an applicant, even in the event of an allegation of anti-union discrimination. The Committee had requested the Government to provide information on any complaints of anti-union discrimination at the time of hiring and any relevant court judgments, as well as to indicate whether section 5(8) of the Labour Code has been invoked in such cases. The Committee notes the Government's information that in support of section 2(3) of the Labour Code which prohibits discrimination, the Law of Georgia on the Elimination of All Forms of Discrimination was adopted in 2014 enabling the Public Defender of Georgia to monitor issues regarding elimination of discrimination, to ensure equality and to discuss the applications and complaints for discrimination. In this respect, the Committee also notes the Government's indication that the amendments to different laws, including the Organic Law of Georgia on the Public Defender, now authorize the Public Defender to issue a fine for public institutions, organizations, private and legal entities for not fulfilling recommendations on the facts of discrimination in labour pre-contractual relations. The Committee further notes that the Government indicates that since the Law of Georgia on the Elimination of All Forms of Discrimination entered into force, nine facts of possible discrimination on the ground of membership of trade unions have been discussed by the Office of the Public Defender, including two cases where the Public Defender presented their opinion, one case where a recommendation on direct discrimination has been issued and six cases where proceedings have been terminated. None of these cases referred to discrimination in pre-contractual relations and no cases regarding discrimination have been assessed by the courts. **Taking due note of the adoption of the Law of Georgia on the Elimination of All Forms of Discrimination, the Committee requests the Government to continue providing information on any complaints of anti-union discrimination at the time of hiring, as well as to indicate whether section 5(8) of the Labour Code has been invoked in such cases. The Committee further requests the Government to indicate which provisions allow the Public Defender of Georgia to issue a fine in case of discrimination in labour pre-contractual relations and to provide detailed information on the number of cases where these provisions may have been invoked.**

Article 2. Interference by employers in internal trade union affairs. In its previous comments, the Committee had requested the Government to confirm that section 40.3 of the Labour Code, which provides that any form of interference by employers and employees' associations in each other's activities is strictly prohibited, covers not only acts of interference between organizations but also instances where individual employers may interfere in employees' associations, and to indicate the remedies and/or sanctions provided in such cases under section 40.3 of the Labour Code. The Committee notes the Government's information that section 5 of the Law of Georgia on Trade Unions provides that trade unions and federations of trade unions are independent from employers and employers' confederations (unions, associations). **Recalling the need for the legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions for acts of interference against workers' and employers' organizations, the Committee requests the Government to indicate the provisions which state the remedies and/or sanctions for violation of section 40.3 of the Labour Code and section 5 of the Law of Georgia on Trade Unions. The Committee requests the Government to continue providing any administrative or judicial decision in this respect.**

Furthermore, the Committee previously requested the Government to provide information on the progress made with respect to the establishment of a State monitoring agency on labour conditions and labour rights issues in consultation with the social partners and with the support of the ILO project on improved compliance with labour laws in Georgia, and to provide detailed information on the application of the Convention in practice. The Committee notes the information provided by the Government regarding the elaboration of a legislative framework on occupational safety and health authorizing the Labour Conditions Inspection Department to conduct inspections with the aim of identifying possible cases of forced labour or labour exploitation. While taking note of this information, the Committee **regrets** that the legislative framework under preparation does not allow for inspections aimed at monitoring compliance with trade union rights. The Committee considers that the existence of such a monitoring would contribute to the resolution and prevention of the persistent allegations of acts of anti-union discrimination and violation of collective bargaining rights raised by several international and national trade union organizations. **The Committee hopes that further steps will be taken by the Government so as to ensure that compliance with the rights enshrined in the Convention is subject to monitoring by the public authorities.**

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to continue to inform on the actions taken to promote collective bargaining both in the public and private sectors and on the number of collective agreements signed and the number of workers covered. The Committee notes that the Government indicates that the Ministry of Labour, Health and Social Affairs does not record collective agreements and, as a result, does not have the information requested. **Emphasizing that the compilation of statistics on collective agreements is an important element of policies aimed at promoting collective bargaining, the Committee once again requests the Government to provide information on the number of**

collective agreements signed and the number of workers covered.

The Committee previously requested the Government to inform about the process of strengthening the labour administration and institutionalizing social dialogue and to inform on the results of the mediation of ongoing labour disputes. The Committee notes the Government's information on the Tripartite Social Partnership Commission (TSPC) meeting held on 10 February 2017, where a roster of mediators consisting of 11 independent, neutral, impartial and qualified mediators was approved for a period of three years. The Committee further notes that the Ministry of Labour, Health and Social Affairs is currently working on the amendment of Decree N301 on Labour Dispute Settlement Procedures aimed at establishing a mechanism for effective resolution of collective labour disputes within short periods of time and at no expense. The Committee also takes note of the statistics provided by the Government with regard to the results of the mediation of ongoing labour disputes. **The Committee welcomes the steps taken to make the mechanism more functional and effective and requests the Government to continue to provide information on any progress in this regard, and in particular on the adoption of the amendment of Decree N301 on Labour Dispute Settlement Procedures, in consultation with the social partners.**

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

C100 - Equal Remuneration Convention, 1951 (No. 100)**Observation 2017**

The Committee notes the observations, dated 26 September 2014, 2 March 2015 and 3 October 2016, from the Georgian Trade Unions Confederation (GTUC) which address similar issues related to the application of the Convention, as well as the response from the Government, dated 20 November 2015 and 16 December 2016.

Articles 1 and 2 of the Convention. Legislation. Since 2002, the Committee has been raising concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that section 2(3) of the Labour Code of 2006, only contains a general prohibition of discrimination in labour relations and that the Law on Gender Equality of 2010 prohibits discrimination (section 6) and provides that "equality in evaluating the quality of work performed by women and men shall be maintained without discrimination" (section 4(2)(i)). The Committee notes with **regret** that the Government continues to refer to the existing equality provisions in the Constitution, the Labour Code and the Law on Gender Equality, and does not indicate whether any consideration is being given, in consultation with the social partners, to reviewing these provisions with a view to giving full legal expression to the principle of equal remuneration for men and women for work of equal value. The Committee further notes that the Law on the Elimination of All Forms of Discrimination, adopted on 2 May 2014, while including a general prohibition of discrimination based on sex, does not refer to the principle of equal remuneration for work of equal value. Furthermore, the Committee notes that section 57(1) of the Law on the Public Service adopted on 27 October 2015 provides that the system of remuneration for public officials is based on the "principles of transparency and fairness, which means the implementation of equal pay for equal work", which is narrower than the principle of the Convention. The Committee recalls that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. It 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 the General Survey on the fundamental Conventions, 2012, paragraphs 672–679). The Committee notes the Government's indication that the "State Strategy of Labour Market Formation and its Implementation Action Plan 2015–18" includes amending the Labour Code to bring its provisions into compliance with international labour standards, and that the GTUC reaffirms the need to give full expression to the principle of equal remuneration for men and women for work of equal value in the legislation. **The Committee urges the Government to take without delay concrete steps, in cooperation with the social partners and the Council for Gender Equality, to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the Convention. It also urges the Government to take the necessary steps to amend section 57(1) of the Law on the Public Service 2015 to capture the concept of "work of equal value" so as to ensure that public officials covered by the Law are entitled not only to equal remuneration for equal work, but also for work that is entirely different but nonetheless of equal value, and to report on the progress made in this regard.**

Article 2. Measures to address the gender pay gap and promote equal remuneration. The Committee recalls the significant differences in average monthly nominal wages of men and women indicating a gender wage gap of 37.7 per cent (first quarter of 2013). The Committee notes the statistics provided by the Government in its report on the average monthly salaries of men and women in 2014 indicating a persistent overall gender wage gap of 36.9 per cent (which is a slight decrease compared to 2013). The statistics point to substantial nominal monthly wage differences in favour of men, with a very high gender wage gap of over 40 per cent in the finance sector, and a gender wage gap amounting to close to 30 per cent or over 35 per cent in a number of sectors including fishing, mining and quarrying, manufacturing, wholesale and retail and hotel and restaurant sectors, as well as in health and social work and other community, social and personal service activities. The Committee notes that in its communication, the GTUC reiterates that a substantial gender gap in average monthly nominal wages exists in every sector of the labour market, including in female-dominated sectors such as education and health care. Referring to a study of the Bureau of Statistics, the GTUC also indicates that inequality exists with respect to the average salary distribution among men and women even with similar levels of education. According to the GTUC, such pay differences may be due to occupational gender segregation, as well as to the fact that men are primarily employed in the private sector whereas women are more evenly distributed across both private and public sectors. The GTUC further indicates that the study of the Bureau of Statistics found substantial gender disparities with regard to benefits and other wage components, and states that some of these could be partly explained by occupational gender segregation but may also be due to gender discrimination. The study found that 66 per cent of the male respondents (who were eligible) received bonuses, compared to only 34 per cent of the female respondents; 60 per cent of the men received premiums compared to 41 per cent of the women. Furthermore, 67 per cent of the men and only 33 per cent of the women claimed to have health insurance provided by the employer. With regard to measures taken to address the gender pay gap, the Committee notes the Government's indication that the 2014–16 National Action Plan on Gender Equality, adopted in January 2014, aims, inter alia, to promote gender equality in the economic sphere. The Government also reports that it has strengthened its institutional mechanisms on gender equality at the executive level, including through the setting up of an Inter-Ministerial Commission on Gender Equality and Women's Empowerment in September 2015. In addition, in 2014, an Interagency Coordinating Council for the Government's Action Plan on the Protection of Human Rights (2014–15) was set up for an indefinite period. The Committee notes that the Action Plan refers to gender equality, women's empowerment and their rights (Chapter 14) and to the protection of labour rights in accordance with international standards (Chapter 21). **Noting however that no further information has been provided on the specific measures taken, including in the context of these mechanisms and the National Action Plan on Gender Equality, to reduce the gender pay gap and address its underlying causes, the Committee urges the Government to take measures without delay to identify and address the underlying causes of inequalities in remuneration, such as gender discrimination, gender stereotypes, and occupational segregation and to promote women's access to a wider range of job opportunities at all levels, including top management positions and higher paying jobs. The Committee also asks the Government to provide information on any awareness-raising activities undertaken in cooperation with the employers' and workers' organizations to promote equal remuneration for work of equal value, including with respect to additional bonuses, premiums and other additional wage allowances. The Government is also asked to continue to provide statistical data on men's and women's monthly and hourly wages and additional allowances, according to economic sector, as well as data on the number of men and women employed in these sectors.**

Enforcement. The Committee previously noted with concern the Government's indication that further to the abolition of the Labour Inspection Service in 2006, there was no longer a labour supervisory body. The Committee notes the Government's reply that a National Programme for Monitoring Labour Conditions was approved by Ordinance No. 38 of 5 February 2015 and that by Ordinance No. 81 of 2 March 2015 a Department of Inspection of Labour Conditions was set up within the Ministry of Labour, Health and Social Affairs. The Department aims to develop the relevant legal framework to inspect safety conditions and review safety-related complaints, and propose recommendations. While noting the Government's indication that the Department of Inspection of Labour Conditions can also develop appropriate recommendations to prevent cases of discrimination and raise awareness, the Committee notes that the National Programme and the responsibilities of the Department of Inspection of Labour Conditions primarily focus on promoting and ensuring a safe and healthy work environment. The Committee notes the observations by the GTUC about the lack of an adequate and effective enforcement mechanism to ensure the practical application of the principle of equal remuneration for men and women for work of equal value. The Committee further notes that the Office of the Public Defender has indicated that the Labour Code should be amended to address the non-binding character of recommendations made by the inspection services. The Committee once again stresses the need to put in place adequate and effective enforcement mechanisms to ensure that the principle of equal remuneration for men and women for work of equal value is applied in practice, and to allow workers to avail themselves of their rights. **The Committee asks the Government to provide information on the manner in which it ensures the effective enforcement of the principle of the Convention, including on any activities of the Department of Inspection of Labour Conditions in this regard. The Committee also asks the Government to take steps to raise awareness among workers, employers and their organizations of the laws and procedures available, and to strengthen the capacity of judges, labour officials or other competent authorities to detect and address pay inequalities between men and women for work of equal value. The Government is also asked to continue to provide any information on decisions handed down by the courts or other competent bodies with regard to this issue, as well as any cases regarding unequal remuneration handled by the Office of the Public Defender, which is mandated to examine complaints of sex discrimination and make recommendations.**

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

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

Observation 2017

The Committee notes the observations of the Georgian Trade Unions Confederation (GTUC) dated 26 September 2014, 2 March 2015 and 3 October 2016 which address similar issues related to the application of the Convention, as well as the responses from the Government dated 20 November 2015, 16 December 2016 and 8 November 2017.

Article 1 of the Convention. Discrimination in the recruitment stage. The Committee recalls its previous comments in which it noted that the Labour Code prohibited any kind of discrimination based on a number of grounds in employment relations (section 2(3)) but did not explicitly cover discrimination at the recruitment or selection stage nor did it define discrimination. The Committee notes that following amendments to section 2(3) of the Labour Code in 2013, discrimination is now prohibited in "pre-contractual relations" (Organic Law No. 729-III of 12 June 2013 to amend the Labour Code). The Committee notes however, that according to the GTUC, discrimination in the context of pre contractual relations, including job advertisements, is still common in practice and cases are often not reported. Pregnancy and marital status, in particular, operate as impediments to recruitment. The GTUC also reiterates that under section 5(8) of the Labour Code an employer is not required to give reasons for a decision not to hire a candidate, which may bar candidates from successfully bringing discrimination cases. The Committee further notes from the Government's report that the Office of the Public Defender found that gender stereotypes regarding the type of jobs for women and men are reflected in discriminatory job advertisements, and that a study of the most widely used job advertisement website (www.jobs.ge) revealed that 10 per cent of the online job advertisements specifically targeted female candidates and 24 per cent male candidates. To address this situation, the Office of the Public Defender has recommended that the Ministry of Labour, Health and Social Affairs develops guidelines to prevent discrimination in the recruitment stage. **The Committee asks the Government to take the necessary steps to eliminate discriminatory practices at the recruitment stage, including in job advertisements, and to provide information on the number and nature of cases handled by the courts or the Office of the Public Defender regarding discrimination in "pre-contractual relations", including sanctions imposed and remedies provided.**

Discrimination based on sex. Sexual harassment. The Committee recalls that section 6(1)(b) of the Law on Gender Equality of 2010 prohibits "any type of unwanted verbal, non-verbal or physical act of a sexual nature that is aimed at or induces impairment of a person's dignity or creates humiliating, hostile or abusive conditions for him/her", and that section 2(4) of the Labour Code only prohibits harassment more generally as a form of discrimination. The Committee notes that the Law on the Elimination of All Forms of Discrimination, adopted in 2014, prohibits discrimination but does not expressly define and prohibit sexual harassment. The Committee notes the observations by the GTUC that sexual harassment is one of the least reported forms of discrimination and that the regular mechanism for administrative complaints is not adequate to address cases of sexual harassment due to the lack of confidentiality. The Committee further notes from the information provided by the Office of the Public Defender that no active steps have been taken towards the prevention of sexual harassment in the workplace, and that the Office of the Public Defender has recommended that the Ministry of Justice establishes a system of adequate sanctions. Regarding the enforcement of section 6(1)(b) of the Law on Gender Equality, the Government refers to the authority of the Gender Equality Council "to examine statements, documents and other information on violations of gender equality". The Government also refers to the mandate of the Office of the Public Defender to monitor the observance of the principle of non-discrimination in general, on the basis of complaints or ex officio, but it is not clear whether that also covers the provisions of the Law on Gender Equality. **The Committee asks the Government to take steps, together with workers' and employers' organizations, to prevent sexual harassment in the workplace, including the development of workplace policies and awareness raising among workers and employers, and to report on the progress made in this regard. It also asks the Government to take the necessary steps to ensure that section 6(1)(b) of the Law on Gender Equality is effectively enforced, and to provide information on any cases of sexual harassment dealt with by the courts or any other competent authorities, including information on sanctions and remedies provided. Noting that the reform of the Labour Code is still ongoing, the Committee also asks the Government to consider including a provision explicitly defining and prohibiting sexual harassment in the workplace similar to section 6(1)(b) of the Law on Gender Equality.**

Article 2. Equality of opportunity and treatment between men and women. The Committee notes from the Government's report on the Equal Remuneration Convention, 1951 (No. 100), that women's economic activity and employment rates, while having increased respectively to 58.9 per cent and 52.9 per cent in 2015, remain low compared to men's economic activity and employment rates, respectively 78.1 per cent and 67.6 per cent. In this regard, the Committee notes that, in its observations, the GTUC emphasizes the linkages between women's low economic activity rate, the feminization of poverty and the high rate of violence against women. It also refers to persisting stereotypes and prejudices about women's role in the family and in decision-making, and to women's difficulties in combining work and family responsibilities. The GTUC further states that occupational gender segregation (the "glass ceiling") is one of the most common forms of discrimination and, despite positive steps towards regulation, the promotion of women and their equal participation in economic development remain problematic. The Committee notes the adoption of the 2014–16 National Action Plan on Gender Equality and the Progress Report, published in 2017, on its implementation. The Committee notes from the Progress Report that training and awareness activities, including media campaigns, have continued to address traditional views and current stereotypes that hinder gender equality. The Progress Report also provides information on the increased number of women's beneficiaries in projects to promote entrepreneurship, agricultural production and cooperatives, and in data collection on gender equality. However, the

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Committee also notes that according to the Report, progress has been slow and various factors hinder the realization of gender equality and the promotion of women's rights, including societal attitudes and gender stereotypes, lack of institutional understanding about the importance of gender equality, lack of an effective legal framework and insufficient human and financial resources. ***The Committee asks the Government to step up its efforts to promote gender equality specifically in the field of employment and occupation, including through addressing stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family. The Committee also urges the Government to take steps to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, at all levels of responsibility, and to promote a more equitable sharing of family responsibilities between men and women, and to report on the results achieved in this regard. Noting that the Progress Report recommended that the outstanding activities of the 2014–16 National Action Plan on Gender Equality should be implemented in the course of 2017, the Committee also asks the Government to provide information on the results thereof, as well as on any specific activities carried out by the Gender Equality Council in the field of employment and occupation. The Committee asks the Government to continue to provide statistics on the situation of men and women in different occupations, including at decision-making level, and in all sectors of the economy.***

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

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

Observation 2017

The Committee notes the observations received on 1 September 2015 from the International Organisation of Employers (IOE) and the Confederation of German Employers' Associations (BDA), which are of a general nature. The Committee notes the observations received on 1 September 2017 from the BDA, endorsed by the IOE, which relate to matters examined by the Committee below. The Committee also notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC) and to the 2012 observations from the German Confederation of Trade Unions (DGB). In particular, the Committee notes with *interest* that, in relation to the 2012 DGB observations denouncing the lack of a general prohibition of the use in non-essential services of temporary workers as strike breakers, the Government indicates that national legislation has been amended to ensure that the receiver is no longer allowed to hire agency workers as strike breakers. According to section 11(5) of the Manpower Provision Act, in effect from 1 April 2017, the receiver shall not allow agency workers to work if the business is directly involved in a labour dispute.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee recalls that it has been requesting for a number of years the adoption of measures to recognize the right of public servants who are not exercising authority in the name of the State to have recourse to strike action. In its previous observation, the Committee had noted with interest a ruling handed down by the Federal Administrative Court on 27 February 2014 holding that, given that the constitutional strike ban depends on the status group and is valid for all civil servants (*Beamte*) irrespective of their duties and responsibilities, there is a collision with the European Convention on Human Rights in the case of civil servants (*Beamte*) who are not active in genuinely sovereign domains (*hoheitliche Befugnisse*), for instance teachers in public schools, and this collision should be solved by the federal legislator; and that, in the case of civil servants (*Beamte*) who exercise sovereign authority, there is no collision with the European Convention on Human Rights and thus no need for action. The Committee had further noted the Government's indication in this regard that, for civil servants (*Beamte*) not exercising sovereign authority, the legislator must bring about a balancing of the mutually exclusive legal positions under Article 33(5) of the Basic Law and the European Convention on Human Rights; that, in the meantime, the constitutional strike ban for civil servants (*Beamte*) remained in force; and that, given that union representatives would refer the matter to the Federal Constitutional Court and that two proceedings on the same subject matter were already pending before it, legislative measures should not forestall the clarification and resolution of the issues by that Court. In light of the above, the Committee had requested the Government to refrain in the future from imposing disciplinary sanctions against any civil servants not exercising authority in the name of the State who participate in peaceful strikes; and to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring possible ways of bringing the legislation into conformity with the Convention. The Committee also requested the Government to provide information on any ruling handed down by the Federal Constitutional Court on the subject.

The Committee notes that the Government reiterates that: (i) under the German Constitution, the public service (*öffentlicher Dienst*) is linked with the institutional guarantee of a professional civil service (*Berufsbeamtentum*), which must be regulated taking into account the traditional principles of the professional civil service (*hergebrachte Grundsätze des Berufsbeamtentums*); (ii) one of those principles is the prohibition on civil servants from participating in industrial action, as the "right to strike" is incompatible with the relationship of service and loyalty, and conflicts with the structural decision that relationships governed by civil service law are regulated by the legislature; and (iii) the prohibition on strike action is compensated for by various rights and principles, such as the principle of a salary commensurate with the civil service position; the characterization of the subjective rights of Article 33(5) of the Basic Law as being equivalent to fundamental rights; and participation rights of the leading organizations of trade unions and employers' associations in the legislative process and other corporate participation rights in the Länder. With regard to the 2014 judgement of the Federal Administrative Court, the Government states that, in its view, the case law of the European Court of Human Rights is not capable of altering these constitutional circumstances, since, despite a functional approach to exception clauses relating to sovereignty, the case law on Article 11 of the European Convention on Human Rights (ECHR) does not exclude the classification of teachers as "members of the administration of the State" within the meaning of the second sentence of Article 11(2). On the contrary, the Government believes that the prohibition on strike action of teachers who have civil servant status is compatible with Article 11(1), given that the interference is justified under Article 11(2) by the legitimate aim of guaranteeing the right to education. The Government adds that the relevant decisions of the Federal Administrative Court are currently the subject of proceedings before the Federal Constitutional Court.

The Committee notes that, according to the BDA: (i) the Federal Administrative Court, in its 2014 judgment, held that, on one side the general strike prohibition on civil servants applies as a conventional principle pursuant to Article 33(5) of the Basic Law and, on the other side, this prohibition of strikes for officials outside the genuinely sovereign domain is incompatible with the freedom of association of Article 11 of the ECHR; (ii) the Federal Administrative Court confirmed in its decision of 26 February 2015 that it is the task of the federal legislator to establish a balance between the incompatible requirements of Article 33(5) of the Basic Law and Article 11 of the ECHR; and that, as long as this has not been done, the public-law strike prohibition, continues to apply and is a disciplinary rule; (iii) the strike ban in Article 33(5) of the Basic Law constitutes an exception to the right to freedom of association guaranteed in Article 9(3) of the Basic Law; (iv) the legislator has different options to adopt a compliant legislation, for example, as a functional matter, by determining areas of genuinely sovereign domains for which a general strike ban should apply, and areas of public administration, where the unilateral regulatory power of the employer should be restricted to extend the participation of representative organizations in the public service; and (v) this issue will be further discussed at national level by the Government and the social partners. Generally, the BDA considers that: (i) as there is no existing legal regulation fully encompassing industrial action, the German employers advocate for a comprehensive regulatory approach, which would take into account the 1950s and 1960s jurisprudence, highlighting that strikes are socio-politically and economically highly undesirable and involve negative consequences for the German national economy, and that this holds especially true in times of growing internationalization and digitalization; (ii) in order to re-establish the balance between the social partners, the legislator must establish appropriate regulations correcting significantly the aberrations created by jurisprudence in past decades and establishing a *numerus clausus* of permissible means of industrial action (essentially lockout for employers and strikes for employees; any means of industrial action involving a "flash mob" must be illegitimate); and (iii) BDA opposes a right to strike for civil servants because they have duties of loyalty towards their employer (the State and the community) and because there would be great discontent in the general public if civil servants went on strike for a wage increase since their payment is indirectly financed by the community through taxes.

The Committee notes with *concern* that the more recent ruling of the Federal Administrative Court handed down on 26 February 2015 upholds the disciplinary action imposed on a teacher with civil servant status (*Beamte*) for having participated in industrial action. The Federal Administrative Court reiterates that the conflict between the general strike prohibition on civil servants who are not engaged in genuinely sovereign domains pursuant to Article 33(5) of the Basic Law and, on the other side, the right to freedom of association under Article 11 of the ECHR, can only be solved by the federal legislator and not by the tribunals. **Noting that the Federal Constitutional Court will soon decide on the constitutional complaint raised following the Federal Administrative Court judgment of 27 February 2014, the Committee requests the Government to provide a copy of that decision, as soon as it is handed down, as well as any other pending decision to be issued by the Federal Constitutional Court on the subject. In view of the collision ascertained by the Federal Administrative Court between Article 33(5) of the Basic Law and Article 11 of the ECHR, and in light of the persisting need highlighted by the Committee for many years to bring the legislation into full conformity with the Convention with regard to the same aspect, the Committee once again requests the Government to: (i) refrain, pending the relevant decision of the Federal Constitutional Court, from imposing disciplinary sanctions against civil servants not exercising authority in the name of the State (such as teachers, postal workers and railway employees) who participate in peaceful strikes; and (ii) to engage in a comprehensive national dialogue with representative organizations in the public service with a view to**

finding possible ways of aligning the legislation with the Convention.

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

Observation 2017

The Committee notes the observations received on 1 September 2017 from the Confederation of German Employers' Associations (BDA), endorsed by the International Organisation of Employers (IOE), which mainly relate to matters under examination by the Committee in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also notes the Government's reply to the 2014 observations of the International Trade Union Confederation (ITUC).

Articles 4 and 6 of the Convention. Right to collective bargaining with respect to conditions of employment of public servants not engaged in the administration of the State. The Committee recalls that it has been requesting, for a number of years, the adoption of measures to ensure that public servants who are not engaged in the administration of the State, enjoy the right to collective bargaining. The Committee had previously noted with interest a ruling handed down by the Federal Administrative Court in 2014 holding that, while the prohibition of collective bargaining deriving from article 33(5) of the Basic Law is linked to the civil servant status and applies to all civil servants irrespective of their duties, Article 11(2) of the European Convention on Human Rights (ECHR) provides that restrictions to freedom of association could only be justified by the relevant function of the civil servant; and that, in the case of civil servants not exercising sovereign authority of the State, for instance teachers in public schools, there is a collision, which needs to be solved by the federal legislator. The Government added that, according to the Federal Administrative Court, in view of the collision between article 33(5) of the Basic Law and article 11 of the ECHR, the federal legislator needed to considerably broaden, in public service domains that were not characterized by the exercise of genuinely sovereign authority, the participation rights of trade unions of civil servants towards a negotiation model. The Committee requested the Government to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring possible ways in which the current system could be developed to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.

The Committee notes that the Government indicates in relation to the employment of teachers or their appointment to a civil servant position that the way in which the State wishes to perform its duties is generally left to its discretion, with the exception of the restriction enshrined in the principle of reserved functions under article 33(4) of the Basic Law, which requires that certain areas be staffed by civil servants; however, this does not remove the State's organizational sovereignty and does not prohibit the State from conferring civil servant status. In this regard the Government supplies several judgments issued in the past by the Federal Constitutional Court. The Committee also notes that the Government refers to its explanations in its report concerning Convention No. 87, according to which: (i) under the German Constitution, the professional civil service must be regulated taking into account the traditional principles of the professional civil service; (ii) one of those principles is the prohibition on civil servants from participating in industrial action, as it is incompatible with the relationship of service and loyalty and with the structural decision that relationships governed by civil service law are regulated by the legislature; (iii) this prohibition is compensated for by various rights and principles, such as the principle of a salary commensurate with the civil service position and participation rights of the leading organizations of trade unions and employers' associations in the legislative process; and (iv) as to the judgment of the Federal Administrative Court, the case law of the European Court of Human Rights is, in the Government's view, not capable of altering these constitutional circumstances, since, despite a functional approach to exception clauses relating to sovereignty, the case law on article 11 of the ECHR does not exclude the classification of teachers as "members of the administration of the State" within the meaning of article 11(2), and the restriction of collective rights is justified by the legitimate aim of guaranteeing the right to education. The Government adds that the relevant decisions of the Federal Administrative Court are currently the subject of proceedings before the Federal Constitutional Court. In this context, the Committee notes from the observations of the BDA, which are mainly reflected under Convention No. 87, the BDA's view that, in light of the Federal Administrative Court judgment, the legislator has different options to implement a legislation in compliance with article 11 of the ECHR, for example by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service; and that this issue will be further discussed at national level by the Government and the social partners, since this implies a revision of the Basic Law, the German Constitution.

The Committee requests the Government to provide a copy of the decision of the Federal Constitutional Court on the constitutional complaint raised following the Federal Administrative Court judgment of 27 February 2014, as soon as it is handed down, as well as any other pending decision to be issued by the Federal Constitutional Court on the subject. The Committee recalls that it has been highlighting for many years that, pursuant to Articles 4 and 6 of the Convention, all public service workers, other than those engaged in the administration of the State, should enjoy collective bargaining rights.

Taking due note of the Federal Administrative Court judgment of 27 February 2014 and the pending decision of the Federal Constitutional Court on the related constitutional complaint, the Committee requests once again the Government to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring innovative solutions and possible ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State, including for instance, as indicated by the BDA, by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service.

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*Observation 2017*

The Committee notes that the Government's report has not been received. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee further notes the detailed observations provided by the Greek General Confederation of Labour (GSEE) dated 31 August 2016 and 31 August 2017 generally concerning the state of play of labour norms and rights in Greece, 2010–17, the impact of the measures in the framework of the country's stability programme and memorandum of understanding conditionality, and in particular specific observations in relation to the application of the Convention. **The Committee expresses its firm expectation that the Government will provide detailed information in reply to the GSEE observations and on all the matters raised in the Committee's previous comments for its consideration at its next meeting.**

In its previous comments, the Committee had noted the observations by the International Trade Union Confederation (ITUC) received on 1 September 2014. **The Committee recalls that the observations of the ITUC concerned clashes with the police forces during a protest action in a shipyard, followed by the arrest of workers and charges against 12 trade unionists, and once again requests the Government to provide its comments thereon. The Committee had also noted the observations received on 19 November 2014 from the International Transport Workers' Federation (ITF) and the Panhellenic Seamen's Federation (PNO) concerning an imminent trial for participation in a general strike in 2013 and once again requests the Government to provide its comments thereon.**

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. The Committee recalls that in its previous comments it had requested the Government to reply to the concerns that had been raised by the GSEE in relation to the closure of the Workers' Housing Organization (OEK) and the Workers' Social Fund (OEE). The Committee had noted the Government's indication that the Organization for Mediation and Arbitration (OMED) had become the full successor to all rights and obligations of these two bodies. It had further noted with interest that in 2013 the annual financial support for trade unions resumed and a Joint Ministerial Decision was issued in 2014 on coverage for trade unions and the Institute of Labour of the GSEE which, according to the Government, was aimed at assisting the collective organization and action of the labour force with a view to improving their living standards and provides various subsidies to trade unions. **The Committee requests the Government to provide its comments on the latest observations of the GSEE in relation to the representation and activities of the OMED.**

[The Government is asked to reply in full to the present comments in 2018.]

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*Observation 2017*

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2014. The Committee also notes that the Government has been requested to provide information to the Committee on the Application of Standards at the 106th Session of the International Labour Conference for failure to supply reports and information on the application of ratified Conventions.

The Committee further notes the detailed observations provided by the Greek General Confederation of Labour (GSEE) dated 31 August 2016 and 31 August 2017 generally concerning the state of play of labour norms and rights in Greece, 2010–17, the impact of the measures in the framework of the country's stability programme and memorandum of understanding conditionality, and specific observations in relation to the application of the Convention. **The Committee expresses its firm expectation that the Government will provide detailed information in reply to the GSEE observations and on all the matters raised in its previous comments for its consideration at its next meeting.**

The Committee notes the observations by the International Trade Union Confederation (ITUC) received on 1 September 2014 and the Government's reply to the ITUC's 2013 observations. The Committee further takes note of the observations provided by the International Organisation of Employers (IOE) in a communication received on 1 September 2014, and the Government's reply to the 2013 observations from the IOE and the Hellenic Federation of Enterprises and Industries (SEV). Finally, the Committee notes the observations of the SEV received on 25 September 2014.

In its previous comments, the Committee noted a number of workshops and seminars that had been held relating to the promotion of sound industrial relations and social dialogue in times of crisis and that a cooperation agreement, including social dialogue as one of the thematic areas, was being negotiated between the ILO and the Government. The Committee notes with **interest** the signing of the cooperation agreement with the ILO and the ongoing work carried out in relation to this Convention within that framework.

Article 4 of the Convention. Promotion of collective bargaining. The Committee notes with **interest** that the Greek General Confederation of Labour (GSEE), the General Confederation of Professionals, Craftsmen and Merchants (GSEVEE), the National Confederation of Greek Commerce (ESEE) and the Association of Greek Tourism Enterprises (SETE) have signed another National General Labour Collective Agreement for the year 2014. The Committee further notes the Government's indication relating to the involvement of the social partners in the development and elaboration of a number of policies, including the National Action Plan on Youth Guarantee, and in the development of an integrated system for the identification of labour market needs. The Government also refers to the establishment in April 2014 of the Government Employment Council charged with promoting new initiatives aimed at fostering employment, which is also to engage with the social partners, including through their participation in a permanent mechanism for consultation, planning and evaluation of employment policies and programmes.

Enterprise-level collective agreements and association of persons. The Committee recalls its previous comments concerning Act No. 3845/2010 which provided that: "Professional and enterprise collective agreements' clauses can (from now on) deviate from the relevant clauses of sectoral and general national agreements, as well as sectoral collective agreements' clauses can deviate from the relevant clauses of national general collective agreements. All relevant details for the application of this provision can be defined by Ministerial Decision." As regards the matter of the association of persons, the Committee had noted that Act No. 4024/2011 provided that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Committee had previously expressed concern that, given the prevalence of small enterprises in the Greek labour market, the facilitation of association of persons, combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011, would have a severely detrimental impact upon the foundation of collective bargaining in the country.

The Committee now observes from the latest statistics provided by the Government that, in 2013, 409 enterprise collective agreements had been signed, 218 of which by associations of persons and 191 by trade unions. Up to 30 June 2014, 188 enterprise-level collective agreements were signed, 96 of which were signed between employers and associations of persons, and 92 with trade unions. In addition, 86 sectoral agreements, two national occupational and three local occupational agreements have been submitted to the competent department of the Ministry of Labour, Social Security and Welfare, yet no arbitration award has been submitted.

The Committee also notes the ITUC's observation on this point that, in 2013, 313 enterprise-level agreements were signed, 178 of which were signed with associations of persons (156 providing for wage cuts), and only 135 by trade unions (42 providing for wage cuts).

Recalling the importance of promoting collective bargaining with workers' organizations and thus improving collective bargaining coverage, the

Committee once again requests the Government to indicate the steps taken to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises.

The Committee notes the observations of the SEV that the Council of State rendered a decision finding that the provision in Act No. 4046 of 14 February 2012, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional. The SEV criticizes this judgment as contrary to the Convention and moreover expresses its deep concern that renewed unilateral recourse to compulsory arbitration will suffocate collective bargaining, as it has always done in Greece. The Committee notes that the Government merely refers to the Council of State decision in its report but does not reply to the concerns raised by the SEV.

The Committee recalls its earlier consideration of the arbitration regime prior to the suppression of unilateral recourse in which it found it not to be contrary to the Convention in so far as it addressed only the basic wage at national or sectoral/occupational level in a context where machinery for minimum wage fixing was yet to be developed. The Committee must nevertheless emphasize that, as a general rule, legislative provisions which permit either party unilaterally to request compulsory arbitration for the settlement of a dispute does not promote voluntary collective bargaining and is thus contrary to the Convention. **The Committee therefore trusts that the measures taken by the Government to respond to the Council of State decision will fully take into account the above considerations and requests it to provide detailed information in this regard and to reply fully to the concerns raised by the SEV.**

Articles 1 and 3. Protection against anti-union dismissal. In its previous comments, the Committee had requested the Government to provide its observations on the comments made by the GSEE relating to the vulnerability of workers to anti-union dismissal within the framework of the introduction of flexible forms of work. The Committee notes the indication in the Government's report to the effect that no legislative change has been made that would diminish the protection level of trade union officials. The Committee recalls, however, that the comments made by the GSEE referred more broadly to the impact that the current context in the country and measures facilitating flexible forms of work might have in weakening the *practical* application of legal protections. **The Committee therefore once again requests the Government to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken with its next report.**

The Committee hopes 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 2017

The Committee notes the observations received on 1 September 2017 from the International Trade Union Confederation (ITUC), which are reflected in the present observation. It also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which relate to issues under examination by the Committee and contain allegations that Act XLII of 2015 resulted in trade unions formerly established in the area of civilian national security not being able to operate properly. **The Committee requests the Government to provide its comments in this respect.**

Freedom of expression. In its previous comments, the Committee had noted with concern that sections 8 and 9 of the 2012 Labour Code prohibit workers from engaging in any conduct, including the exercise of their right to express an opinion – whether during or outside working time – that may jeopardize the employer's reputation or legitimate economic and organizational interests, and explicitly provide for the possibility to restrict workers' personal rights in this regard. The Committee had requested the Government to provide detailed information on the results of the "For Employment" project, under which an assessment of the impact of the Labour Code on employers and workers had been undertaken, as well as on the outcome of the consultations on the modification of the Labour Code within the framework of the Permanent Consultation Forum of the Market Sector and the Government (VKF). The Committee had expressed the hope that the review of the Labour Code would fully take into account its comments with respect to the need to take any necessary measures to ensure respect for freedom of expression. The Committee notes that the Government confines itself to indicating that the negotiations in question have not been closed yet. The Committee **regrets** that no information has been provided by the Government on the outcome of the "For Employment" project (completed in August 2015) or on the consultations undertaken since 2015 within the framework of the VKF with a view to elaborating consensus-based proposals for the review of the Labour Code. **The Committee highlights once again the need to take all necessary, including legislative, measures to guarantee that sections 8 and 9 of the Labour Code do not impede the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members, and expects that its comments will be fully taken into account in the framework of the ongoing review of the Labour Code. It requests the Government to provide information on any progress achieved in this respect.**

Article 2 of the Convention. Registration of trade unions. In its previous comments, the Committee had noted the allegation of the workers' group of the National ILO Council that numerous rules in the new Civil Code concerning the establishment of trade unions (for example, on trade union headquarters and the verification of its legal usage) obstructed their registration in practice. The Committee had requested the Government to: (i) assess without delay, in consultation with the social partners, the need to simplify the registration requirements, including those relating to union headquarters, as well as the ensuing obligation to bring the trade union by-laws into line with the Civil Code on or before 15 March 2016; and (ii) take the necessary steps to effectively address the difficulties signalled with respect to registration in practice, so as not to hinder the right of workers to establish organizations of their own choosing. The Committee had also requested the Government to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

The Committee notes the Government's indication that Act CLXXIX of 2016 on the amendment and acceleration of proceedings regarding the registration of civil society organizations and companies, which entered into force on 1 January 2017, amended the 2011 Association Act, the 2013 Civil Code and the 2011 Civil Organization Registration Act. The legislative amendments were adopted to: (i) simplify the contents of association statutes; (ii) rationalize the court registration and change registration procedures of civil society organizations (court examination limited to compliance with essential legal requirements on number of founders, representative bodies, operation, mandatory content of statutes, legal association objectives, etc.; notices to supply missing information no longer issued on account of minor errors); and (iii) accelerate the registration by courts of civil society organizations (termination of the public prosecutor's power to control the legality of civil society organizations; maximum time limit for registration). The Committee notes, however, that the ITUC reiterates that trade union registration regulated by the Civil Organization Registration Act is still being subjected to very strict requirements and numerous rules that operate in practice as a means to obstruct the registration of new trade unions, including the stringent requirements on trade union headquarters (unions need to prove that they have the right to use the property), and alleges that in many cases judges refused to register a union because of minor flaws in the application form and forced unions to include the enterprise name in their official names. The Committee further notes that the workers' group of the National ILO Council states that, when the new Civil Code entered into force, all trade unions had to modify their statutes to be consistent with the law and at the same time report the changes to the courts, and reiterates that these regulations pose a serious administrative burden on trade unions.

The Committee observes the persisting divergence between the statements of the Government and the workers' organizations. **The Committee requests the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council concerning in particular the stringent requirements in relation to union headquarters, the alleged refusal of registration due to minor flaws, the alleged imposition of including the company name in the official name of associations, and the alleged difficulties created or encountered by trade unions because of the obligation to bring their by-laws into line with the Civil Code.** The Committee recalls that, although the formalities of registration allow for official recognition of workers' or employers' organizations, these formalities should not become an obstacle to the exercise of legitimate trade union activities nor allow for undue discretionary power to deny or delay the establishment of such organizations. **Accordingly, the Committee requests the Government to: (i) engage without delay in consultations with the most representative employers' and workers' organizations to assess the need to further simplify the registration requirements, including those relating to union headquarters; and (ii) take the necessary measures to effectively address the alleged obstacles to registration in practice, so as not to impede the right of workers to establish organizations of their own choosing. In the absence of the solicited information, the Committee also requests the Government once again to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.**

Article 3. Right of workers' organizations to organize their administration. The Committee notes that the ITUC alleges that trade union activity is severely restricted by the power of national prosecutors to control trade union activities, for instance by reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices; and further alleges that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law. The Committee notes the Government's indication that, while public prosecutors no longer have the right to control the legality of the establishment of the civil society organizations, they retain the power to control the legality of their operation. The Committee generally recalls that acts as described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in Article 3 of the Convention. **The Committee requests the Government to provide its comments with respect to the specific ITUC allegations above.**

Right of workers' organizations to organize their activities. The Committee had previously noted that: (i) the Strike Act, as amended, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, they shall be agreed upon by the parties during the pre-strike negotiations or, failing such agreement, they shall be determined by final decision of the court; and (ii) excessive minimum levels of service are fixed for passenger transportation public services by Act XLI of 2012 (Passenger Transport Services Act), both at the local and suburban levels (66 per cent) and at national and regional levels (50 per cent); as well as with regard to postal services by Act CLIX of 2012 (Postal Services Act), for the collection and delivery of official documents and other mail. The Committee trusted, in view of the consultations undertaken on the modification of the Strike Act, that due

account would be taken of its comments during the legislative review.

The Committee notes that the Government refers again to the relevant provisions of the Strike Act (section 4(2) and (3)) and to the Passenger Transport Services Act and Postal Services Act. In the Government's view, by regulating the extent of sufficient services in respect of two basic services that substantially affect the public and thus creating a pre-clarified situation, the legislature promoted legal certainty in the context of the exercise of the right to strike. The level of sufficient services was determined seeking to resolve the potential tension between the exercisability of the right to strike and the fulfilment of the State's responsibilities to satisfy public needs. The Government further indicates that negotiations on the amendment of the Strike Act took place in the framework of the VKF throughout 2015 and 2016, in the course of which the trade unions considered that the extent of sufficient services in the passenger transport sector was excessive. The employees' and employers' sides managed to agree on a few aspects of the amendment of the Strike Act, but failed to reach an agreement regarding, inter alia, which institution should be authorized to determine the extent of sufficient services in the absence of a legal provision or agreement. Stressing the importance of a compromise of the social partners on the amendment proposals of the Strike Act, the Government adds that, since the trade unions had announced proposals at the end of 2016 but had not submitted them during the first half of the year, no further discussions have taken place in 2017. The Committee further notes that the workers' group of the National ILO Council reiterates that the strike legislation contains an obligation to provide sufficient service during strike action which in some sectors virtually precludes the exercise of the right to strike (for example by requiring 66 per cent of the service to be provided during the strike and ensuring the feasibility of this rate through extremely complicated rules).

The Committee recalls that, since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities; and emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on such services should be resolved by a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions. The Committee further recalls that the minimum service must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and that, in the past, it has considered that a requirement of 50 per cent of the volume of transportation may considerably restrict the right of transport workers to take industrial action. **The Committee therefore once again highlights the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act) in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body. The Committee expects that the consultations on the modification of the Strike Act undertaken within the framework of the VKF will continue. It requests the Government to provide up-to-date information on the status or results of the negotiations with particular regard to the manner of determining minimum services and the levels imposed in the postal and passenger transport sectors, and expects that the Committee's comments will be duly taken into consideration during the legislative review.**

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

Observation 2017

The Committee notes the observations received on 1 September 2015 and 1 September 2017 from the International Trade Union Confederation (ITUC), alleging acts of anti-union dismissals, union busting and intimidation in several enterprises, and criticizing in particular the excessive limitation of the scope of collective bargaining and the employers' power to unilaterally modify the scope and content of collective agreements. The Committee also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which denounce that: (i) the law does not allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements, not even with respect to their own members; (ii) the law restricts the 'coalition' freedoms of trade unions for entitlement to collective bargaining so that they cannot seek to collectively attain the 10 per cent threshold; and (iii) in those cases where no trade union represents the required percentage, the workers' council is entitled to enter into a collective bargaining agreement (except on wage issues). **The Committee requests the Government to provide its comments with respect to the observations of the ITUC and the workers' group of the National ILO Council, including to clarify whether the representativity threshold applies to collective agreements at both enterprise and industry levels.**

The Committee further notes several judgments of the Supreme Court of Hungary (Curia) supplied by the Government, which have a bearing on the Convention, in particular on the promotion of collective bargaining.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously noted the Government's indications that: (i) section 82 of the Labour Code provides compensation not exceeding the worker's 12-month absence pay in case of unlawful dismissal of trade union officials or members; (ii) reinstatement is granted in case of dismissals violating the principle of equal treatment (section 83(1)(a)) or dismissals violating the requirement for prior consent of the union's higher body before the termination of a union official (section 83(1)(c)); and (iii) while the Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates, the Equal Treatment Authority (ETA) may, in such cases, levy fines. The Committee notes with **interest** the Government's indication that Bill No. T/17998 on the amendment of legislation related to the entry into force of the Act on the General Administrative Order, which will also bring about the harmonization of the Labour Code and relevant ILO Conventions, contains inter alia a provision amending the definition of worker representatives (section 294(1)(e) of the Labour Code), the purpose of which is to ensure that, in the event of unlawful termination of a worker representative, the possibility of requesting reinstatement into the original job will also be awarded to union officers, not only to elected representatives as is currently the case under section 83(1)(d). **The Committee expects that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities, and requests the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard. In the absence of the information solicited from the Government with respect to the working of the ETA, the Committee requests the Government once again: (i) to indicate whether, given that section 16(1)(a) of the Equal Treatment Act stipulates that the ETA may order the elimination of the situation constituting a violation of law, the ETA may order on that basis reinstatement in case of anti-union dismissals of trade union officials and members; (ii) to provide information as to whether the ETA may order compensation on the basis of section 82 of the Labour Code; and (iii) to provide information on the average duration of the proceedings before the ETA related to anti-union discrimination (including of any subsequent appeal procedures before the courts), as well as on the average duration of purely judicial proceedings.**

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee, while noting the Government's indication that the Constitution and the current national legislation were sufficient to prevent acts of interference, had requested the Government to take steps to adopt specific legislative provisions prohibiting acts of interference. Noting that the Government provides no information in this respect, the Committee recalls that it considers that the provisions of the Labour Code and the Equal Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. **The Committee requests the Government once again to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal**

procedures, coupled with effective and sufficiently dissuasive sanctions.

Article 4. Collective bargaining in practice. The Committee requests the Government to provide information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements.

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

Observation 2017

Article 1 of the Convention. Discrimination in employment and occupation. Legislation. The Committee recalls its previous comments on the Labour Code 2012, in which it noted that the Code, although providing for the principle of equal treatment (section 12), does not explicitly prohibit discrimination nor does it enumerate any prohibited grounds of discrimination or refer to the prohibited grounds enumerated in the Equal Treatment Act 2003. The Committee notes the Government's indication that the Labour Code has to be read in conjunction with the Equal Treatment Act 2003, which complements section 12(1) of the Labour Code. The Committee recalls that, following an amendment to the Labour Inspection Act of 1996, which entered into force in 2012, the competence of the labour inspectorate no longer covers compliance with equal treatment provisions. This is now entirely a matter for the Equal Treatment Authority (ETA). The Committee previously noted that labour inspectors, who have regular access to workplaces and to workers and employers, have a crucial role in preventing, detecting and addressing discrimination and promoting equality in employment and occupation. This role is different from, but complementary to, the role played by the ETA.

Recalling that the implementation of the Convention presupposes a clear and comprehensive legislative framework as well as ensuring that the right to equality and non-discrimination is effective in practice, the Committee encourages the Government, in collaboration with workers' and employers' organizations, to consider amending the Labour Code to include provisions defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation, on at least all the grounds listed in Article 1(1)(a) of the Convention, and to review the competences of the labour inspectorate with a view to extending them to cover the legislation addressing equal treatment. The Committee asks the Government to provide information on any developments in this respect.

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

C100 - Equal Remuneration Convention, 1951 (No. 100)*Observation 2017*

The Committee notes with **interest** the numerous measures taken by the Government, in collaboration with workers' and employers' organizations, to improve the application of the Convention by specifically addressing and reducing the gender pay gap. These measures include the adoption of a Plan of Action on Gender Equality regarding Wages (2012–16), the establishment of a task force to function as a forum for collaboration between the Government and the social partners on equal pay issues, the development of the Equal Pay Standard IST 85:2012 and a certification system on equal pay, and the undertaking of studies to identify the situation of women in the labour market and the causes of pay inequality. The Committee notes that, after much study and experimentation, the Act on equal status and equal rights of women and men No. 10/2008 has been amended by Act No. 56/2017 to require a company or institution with an average of 25 or more employees to acquire certification on an annual basis to confirm that the equal pay system meets the requirements of the Equal Pay Standard IST 85:2012. The outcome of certification together with a report is to be sent to the Centre for Gender Equality. The Act also provides that the organizations of employers and workers can negotiate the inclusion in collective agreements of the manner in which the equal pay audit will be conducted in accordance with the Equal Pay Standard IST 85:2012. The Act further requires the social partners to monitor that companies and institutions acquire the required certification and the maintenance by the Centre for Gender Equality of a public register of companies and institutions that have acquired certification. The Committee also notes that these measures have been supplemented to tackle other identified causes of the gender pay gap, including horizontal and vertical gender segregation in the labour market and within companies and the issue of balancing work and family responsibilities for both men and women. These other measures are addressed in the Committee's comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156). **The Committee welcomes the comprehensive approach taken by the Government and the social partners and asks the Government to provide detailed information on the specific outcomes and impact of the Plan of Action on Gender Equality regarding Wages (2012–16) and any follow-up that is envisaged or undertaken to continue to promote and guide action to reduce the gender pay gap. The Committee also asks the Government to provide information on the implementation, monitoring, enforcement and impact of the new provisions of the Act on equal status and equal rights of women and men No. 10/2008 requiring equal pay certification, including any action taken by the Centre for Gender Equality and by the social partners, and any collective agreements that have taken up the certification process.**

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*Observation 2017*

Article 1 of the Convention. Discrimination based on grounds other than sex. The Committee recalls that it has been asking the Government to adopt comprehensive anti-discrimination legislation in employment and occupation covering at least all the grounds listed in *Article 1(1)(a)* of the Convention. The Committee notes that the Bill on Equal Treatment in the Labour Market which establishes equal treatment irrespective of race, national origin, religion or outlook on life, disability, invalidity, age, sexual orientation or sexual identity and the Bill on Equal Treatment concerning race and national origin, to which the Government has been referring for a number of years, still have not been submitted to the legislative assembly for approval. Noting the Government's indication that these draft laws are designed to give effect to the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and the Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Committee draws the Government's attention to the importance of also ensuring these draft laws, when adopted, comply fully with the requirements of this Convention. **The Committee therefore asks the Government to take the necessary steps to ensure that any new anti-discrimination law addresses employment and occupation on all the grounds covered by the Convention, including race, colour, sex, religion, political opinion, national extraction and social origin. The Committee urges the Government to take the necessary steps to ensure that new legislation is adopted in the near future and asks the Government to continue to provide information on any steps taken to this end.**

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

Observation 2017

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

In its previous comments, the Committee had noted the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention and in particular the application of Irish competition law to self-employed workers.

The Committee notes the general observations provided by the Irish Business and Employers' Confederation (IBEC) and the International Organisation of Employers (IOE) dated 31 August and 1 September 2017 to the effect that recent developments in Ireland's industrial relations framework have further strengthened an already robust structure for the protection and promotion of the rights of freedom of expression and to form and join trade unions. They further refer to the recent amendments to the Competition Law noted below.

Article 4 of the Convention. Promotion of collective bargaining. Self-employed workers. In its previous comments, the Committee noted the Government's statement of the need to protect vulnerable workers and the multifaceted challenges raised with respect to the issue presented by false self employment. The Committee further noted with interest the Government's indication that a Bill had been introduced in Parliament 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 Committee notes with **satisfaction** and welcomes the adoption on 7 June 2017 of the Competition (Amendment) Act which, in particular, provides that the Act's prohibition of entering into agreements setting prices shall not apply to collective bargaining and agreements in respect of relevant categories of self employed workers as defined in schedule 4 to include actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists. The Act further defines fully dependent and false self-employed workers for whom a trade union may apply for exclusion for the purposes of collective bargaining.

The Committee takes note of the concerns raised by the IBEC and the IOE that: (i) there was no consultation on the measures taken in this regard; (ii) the parameters for defining "fully dependent" or "false" self-employed workers are not clear and that such categories, rather than being determined by a court, are to be determined by the Minister in consultation with a trade union only; (iii) it is unclear with whom such a worker should engage in collective bargaining, the possible expansion of schedule 4 being a matter of concern; and (iv) these changes may have significant adverse implications for Ireland's competitiveness.

While recalling its previous comments emphasizing the importance of promoting full and voluntary collective bargaining for all workers covered by the Convention, including self-employed workers, the Committee requests the Government to provide its comments on these observations, including all available information on the application of the Amendment Act in practice, as well as on the other points made by the IBEC and the IOE in relation to the Industrial Relations (Amendment) Act 2015.

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

Observation 2017

Articles 1 and 2 of the Convention. Employment policy measures. In its previous comments, the Committee requested the Government to provide information on the application of *Article 2* of the Convention, including 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. The Committee notes the Government's indication that it continues to tackle unemployment through its twin key strategies: the Action Plan for Jobs (APJ) and Pathways to Work. The APJ complements Pathways to Work, which targets the unemployed and young people, to assist them in accessing the labour market. Through these twin strategies, the Government aims to see 2.1 million people in employment by 2018. Following the 2014 Organisation for Economic Co operation and Development (OECD) review of the APJ process, a performance assessment framework was introduced to link actions more clearly to the Government's high level strategic goals. The APJ is published each year and builds on progress made in previous plans. The Committee notes that the main objectives of the current APJ, launched in February 2017, are, by 2020: to increase the number of people at work by 200,000; to add up to 45,000 new jobs; and to reduce the unemployment rate to 6 per cent. Between June 2015 and January 2016, eight Regional APJs were published, which seek to increase employment by a further 10 to 15 per cent in each region by 2020 as well as to ensure that the unemployment rate in these regions is within one per cent of the state average. Key targets of the regional APJs include increasing the number of entrepreneurs/start-ups in each region by at least 25 per cent, improving their five year survival rate and increasing FDI investment into each region by 30–40 per cent. The Government's second key strategy, Pathways to Work 2016–20, adopted in January 2016, sets out actions to support access to the labour market for long-term unemployed and young unemployed people. The Government adds that the strategy seeks to reverse the dramatic rise in the numbers of unemployed jobseekers on the Live Register. Pathways to Work 2012–15 has played a key role in increasing the number of people in work, which will shortly exceed two million, and that the number of unemployed during 2012–15 fell by about 38 per cent, with the overall rate of unemployment having fallen to 8.8 per cent in this period. Moreover, according to the APJ 2017 report, the number of young unemployed declined from 61,700 in December 2012 to 29,400 in December 2016. Recognizing that experience from other recoveries has shown that job creation alone is not sufficient to generate full employment, Pathways to Work 2016–20, developed through extensive consultation with stakeholders and front-line workers engaged in delivering employment services, reflects a shift from "activation in a time of recession" to "activation in a time of recovery and growth". The Committee refers to its comments under the Employment Service Convention, 1948 (No. 88), in which it noted that based on six strands of action, the strategy focuses on enhancing employment, education and training services for jobseekers; reforms aimed at making work pay; and increasing engagement with employers to provide employment opportunities. **The Committee requests the Government to continue to provide information on the impact of the employment measures taken under the twin key strategies: Action Plan for Jobs and Pathways to Work 2016–20. It also requests the Government to continue to provide information on the procedures for deciding on and reviewing employment measures implemented within the framework of an overall economic and social policy.**

Education and training policies and programmes. The Committee notes the Government's indication concerning the adoption of the first Action Plan for Education 2016–19 in September 2016, which aims to make the Irish education and training service the best in Europe by 2026. It envisages the consultation with stakeholders in the monitoring and designing of each annual programme. The Committee notes that in the context of significant reform in the education and training sector, the Government launched the National Skills Strategy 2025, which seeks to support the development of a well-educated, well-skilled and adaptable labour force, and the Further Education and Training Strategy 2014–19, which facilitates lifelong learning, social inclusion and access to education and training opportunities. These strategies include among its key priorities addressing the challenge of unemployment and providing targeted skills programmes that support job seekers to reskill and upskill, particularly in areas where sustainable employment opportunities are emerging. **The Committee requests the Government to provide information on the impact of the Action Plan for Education, the National Skills Strategy 2025, and the Further Education and Training Strategy 2014–19. It also requests the Government to indicate the manner in which the social partners and other stakeholders concerned are consulted with respect to the development of education and training programmes that meet the needs of the labour market.**

Article 3. Consultations with the social partners. The Government indicates that the development, implementation and review of the APJ and the Pathways to Work strategies are based on extensive consultation with interested parties, including the workers' and employers' organizations Irish Congress of Trade Unions

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(ICTU) and the Irish Business and Employers' Confederation (IBEC), respectively, as well as those unemployed. The Committee notes with *interest* the establishment of the Labour Employer Economic Forum (LEEF), as a new formal structure for dialogue between social partners to discuss economic and social policies that affect employment and the workplace. ***The Committee requests the Government to provide further information on the activities of the LEEF with respect to the development, implementation and review of coordinated employment policy measures and programmes and their links to other economic and social policies.***

C097 - Migration for Employment Convention (Revised), 1949 (No. 97)*Observation 2017*

Article 6 of the Convention. Equality of treatment (foreign caregivers). The Committee recalls its previous observation regarding the exclusion of live-in caregivers from the applicability of the Hours of Work and Rest Law 1951, and the concerns raised that a discriminatory and inferior legal regime would be applied to women migrant workers. It also recalls the heavy dependence of the care sector on the work of live-in foreign caregivers, and the importance, in the context of proposed reforms regarding the nursing sector, to ensure proper working conditions and effective and accessible complaints mechanisms and means of redress to foreign caregivers in line with *Article 6(1)(a)–(d)* of the Convention. The Committee notes from the Government's report that 49,156 workers (or 58 per cent of all foreign workers) were employed in the nursing sector in 2016 and that at least 80 per cent of them were women. The Committee also notes that foreign caregivers continue to be required to reside in the homes of their employers and that live-out arrangements or part-time employment are prohibited (Foreign Workers' Handbook, updated in 2017). The Committee previously noted that the 63,000 female Israeli care workers in the long-term caregiving sector were mostly employed in part-time jobs through nursing care companies. No comparable data are provided on the number of Israeli workers in the long-term caregiving sector in 2016. Regarding measures to improve the situation of foreign caregivers, the Committee refers to its observation on the Equal Remuneration Convention, 1951 (No. 100), in which it notes the Government's intention to adopt a gradual approach towards the implementation of recommendations made to the Ministry of Economy to improve the situation of foreign caregivers, which related, among others, to amendments of the legislation and a comprehensive wage. The Committee notes the Government's reply that the collective agreements which have been adopted in the past few years have established a minimum wage, far higher than the statutory minimum wage, which has had an impact on migrants' income. Therefore, the rise in the minimum wage should be considered an appropriate compensation for those foreign live-in caregivers who have no possibility to have compensation for overtime. The Government also states that in most cases workers in the sector do not work more than a regular working day. Recalling the heavy dependence of the care sector on the work of live-in foreign caregivers, the Committee wishes to draw the Government's attention to the close correlation between the quality of the working and living conditions of the care providers and the quality and continuity of the care provided, in particular in the case of long-term care. **Considering that the caregiving sector is the largest sector in which foreign workers are employed and taking due note of the Government's intention to find an appropriate solution towards improving their situation, the Committee refers to its comments on Convention No. 100 and asks the Government to continue its efforts, in consultation with workers' and employers' organizations, to ensure that the proposed legislative framework guaranteeing adequate pay and favourable working conditions for caregivers is in accordance with the provisions of Article 6 of the Convention. The Committee asks the Government to provide detailed information on the progress made and on any obstacles encountered in this regard.**

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

C100 - Equal Remuneration Convention, 1951 (No. 100)*Observation 2017*

Article 2 of the Convention. Application of the principle of the Convention to caregivers. The Committee recalls its previous observations in which it referred to the possible discriminatory impact of the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009 excluding the application of the Hours of Work and Rest Law 1951, including the provisions on overtime pay, to foreign women workers providing care on a live-in basis. It also recalls that a number of recommendations were made to the Minister of Economy to improve the situation, including the following: (i) amending the Hours of Work and Rest Law and its regulations concerning overtime pay; (ii) providing caregivers with a comprehensive wage which would include payment for overtime of not less than 120 per cent of the monthly minimum wage; (iii) ensuring that the weekly rest would be no less than 25 hours; (iv) amending the Wage Protection Law 1958; and (v) abolishing the regulation which entitles the employer to deduct half of the sum for housing with respect to live-in caregivers. The Committee notes that the Government in its report reaffirms its commitment to find an appropriate solution to improve the situation of caregivers. The Government indicates that although there have been several significant increases of the minimum wage, which also included caregivers, it was found that implementing the abovementioned recommendations together with the increased minimum wage, would place a very heavy burden on the employers of caregivers, who are among the most financially weak segments of the population. The Government indicates that the process will take time and that it has decided to adopt a gradual approach towards improving the situation of caregivers. The Committee wishes to draw the Government's attention to the fact that, while the Convention is flexible regarding the measures to be used and the timing in achieving its objective, it allows no compromise in the objective to be pursued (see General Survey on the fundamental Conventions, 2012, paragraph 670). **The Committee encourages the Government to identify benchmarks or milestones to mark progress towards achieving the objectives of the Convention in a time-bound manner. The Committee takes due note of the Government's commitment to address the situation of caregivers through a gradual approach and asks the Government to continue its efforts, in cooperation with workers' and employers' organizations, in finding the appropriate solution to ensure that care work, which is a female-dominated sector, is not undervalued based on gender stereotypes, and to provide information on the specific measures adopted in this respect. The Committee also asks the Government to provide information on any measures taken to raise awareness among the users and beneficiaries of care services, of the need to recognize the value of care work and the importance of applying the principle of equal remuneration for work of equal value to this particular sector of employment. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.**

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

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

Observation 2017

Italy (ratification: 1963)

Article 1 of the Convention. Discrimination on the basis of sex. Pregnancy and maternity. The Committee refers to its previous comments on the practice of having the worker sign an undated letter of resignation at the time of hiring for future use by the employer at their convenience (*licenziamento in bianco*), which affects in particular pregnant women. The Committee notes the Government's indication that the simplified procedure for resignation that was introduced with Legislative Decree No. 151/2015 did not extend to working parents with children up to three years of age, for which the resignation continues to need the validation of the labour inspectorate to be effective. The Committee notes that, in 2014, the labour inspectorate validated 26,333 resignations and consensual terminations, 85 per cent of which concerned working mothers. The vast majority of these cases were resignations (20,774 out of 22,480) and affected women between 26 and 35 years of age (13,342 cases), confirming a trend previously identified. In 2015, the cases concerning working mothers increased to 25,620, out of which 17,592 concerned women between 26 and 35 years of age. The Committee also notes that the reasons put forward by women for their resignation continue to relate, for the largest part, to the impossibility of reconciling family responsibilities and working obligations due to the lack of available childcare or parental support, the high costs of childcare when available, and the failure to permit part-time work. The Committee notes the adoption of Legislative Decree No. 80/2015, on measures for the reconciliation of care, work and family life, and of Law No. 81/2017, which provides for measures aimed at promoting new flexible working arrangements for employees of the public and private sectors. It also notes the measures directed at promoting the reconciliation of family responsibilities and working obligations that are included in the three-year plans on affirmative actions of the public administrations referred to in the Government's report. **The Committee asks the Government to provide information on the specific measures adopted under Legislative Decree No. 80/2015 and Law No. 81/2017 and their impact on reducing the incidence of resignations among working women. The Government is also asked to provide information on the impact in this respect of the measures implemented under the three-year plan on affirmative action by public administration. Noting that, in light of the disproportionate impact of the practice of the "licenziamento in bianco" on women with children of less than three years of age, the reasons provided by women when validating their resignation may conceal a structural pattern of discrimination against women on the basis of pregnancy and maternity, the Committee also asks the Government to step up its efforts to prevent and eliminate all discrimination against women based on these grounds, and to provide information on the specific measures taken to this end and their impact.**

Article 2. Equality of opportunity and treatment irrespective of race, colour or national extraction. The Committee notes from the 2014 report of the Office for the Promotion of Equality of Treatment and Elimination of Discrimination based on Race and Ethnic Origin (UNAR) that 18.8 per cent of all cases of discrimination received by the UNAR in 2014 concerned discrimination at the workplace and more than half of these (53.6 per cent) were based on the grounds of race, colour or national extraction. The Committee notes the Government's indication that a National Action Plan against Racism, Xenophobia and Intolerance was adopted in September 2015 with the objective of identifying priority areas of intervention to prevent and address discrimination. The Plan envisages monitoring discriminatory practices in key areas through the collection of data over time and addressing cases of discrimination affecting access to education, health and labour, in both the public and the private sectors. **While noting the information provided by the Government on the number of initiatives adopted over time to combat discrimination and promote equality of opportunity and treatment, the Committee observes the continued absence of specific information on their practical application and results, and asks the Government to gather and provide detailed information on the impact of the various initiatives undertaken and the main obstacles encountered, allowing the Committee to assess the progress made over time in realizing the objectives of the Convention. To this end, the Committee also encourages the Government to collect data disaggregated by ethnic origin on the distribution of women and men in the labour market in order to better monitor and assess the impact of the measures taken to prevent and address discrimination in employment and occupation based on race, colour and national extraction. Furthermore, the Committee again asks the Government to provide information on the activities of the Centre for research and monitoring of xenophobia and racial and ethnic discrimination (CERIDER), as far as education, training, employment and occupation are concerned, and their results. The Government is also asked to continue to provide information on the activities of the UNAR and the outcome of the cases of discrimination processed.**

Roma, Sinti and Travellers. The Committee notes from the UNAR report, that 15.1 per cent of all cases of discrimination received by the UNAR in 2014 concerned Roma people, of which 2 per cent were work-related. It also notes that in 2017, the Institute of Statistics (INSTAT) released a survey of existing data sources concerning Roma, Sinti and Travellers in four municipalities (Naples, Bari, Catania and Lamezia Terme). The report finds that only approximately 38 per cent of the existing sources contain information on the situation of these groups in employment and occupation. The Committee notes that in 2014, the UNAR promoted a pilot initiative to promote access to employment for disadvantaged and discriminated against groups, which targeted beneficiaries from the Roma, Sinti and Traveller communities in four regions, namely Calabria, Campania, Puglia and Sicily. Under this initiative, 123 participants were provided with paid internships from September to December 2014. The Committee also notes the information provided by the Government on the Net-Kard project, which started in 2014 with the objective of disseminating guidelines on how to overcome discrimination against the Roma population. In 2015, the project produced four practical guides on preventing and addressing discrimination against the Roma for law practitioners, media professionals, non-governmental organizations and police services. The Committee further notes that awareness-raising campaigns to combat prejudice against the stereotyping of the Roma, Sinti and Travellers continue to be undertaken within the framework of the DOSTA campaign (Enough! Campaign, in Romani). The Committee notes that no information is provided in the Government's report concerning specifically the implementation of the National Strategy for the Inclusion of Roma, Sinti and Travellers. The Committee notes from the fourth opinion on Italy of the Advisory Committee on the Framework Convention for the Protection of National Minorities that, according to an assessment made by the European Commission in 2014, the implementation of the Strategy has not progressed significantly and that few concrete results could be demonstrated on any of the four key areas covered by the Strategy (see ACFC/OP/IV(2015)006, 12 July 2016, paragraph 39). **In order for the Committee to be in a position to evaluate the results achieved by the various measures taken to promote equality of opportunity and treatment of Roma, Sinti and Travellers in employment and occupation, the Committee asks the Government to undertake a comprehensive assessment of the progress made to date in addressing the discrimination suffered by Roma, Sinti and Travellers in employment and occupation. It also asks the Government to identify the additional measures needed in order to advance further equality of opportunity and treatment for men and women of Roma, Sinti and Travellers groups. The Government is also asked to indicate how the implementation of these measures is coordinated and monitored, and supply information on their impact, including information on the results of the pilot initiative to promote access to employment for disadvantaged and discriminated against groups and any follow-up envisaged. Further, the Government is asked to provide information on the National Strategy for the Inclusion of Roma, Sinti and Travellers and the results of the research project on the integration of Roma, Sinti and Travellers carried out by INSTAT and the Department of Equal Opportunities, including any statistical data gathered in this context.**

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

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

Observation 2017

Articles 2 and 5 of the Convention. National policy to encourage permanent or regular employment for dockworkers. Cooperation between the social partners

to improve the efficiency of work in ports. The Committee notes with **satisfaction** the Government's comprehensive detailed report, which contains information on the implementation of Legislative Decree No. 81 of 15 June 2015, as well as a copy of the national collective agreement (CCNL) on dock work currently in force for 2016–18. Through Decree No. 81/2015, the Government revised the national framework regulating employment contracts. With respect to dockworkers, the Government reiterates its previous comments that most dockworkers are employed by authorized port companies and hold employment contracts of indefinite duration. It adds that this does not exclude the possibility of engaging dockworkers on other types of employment contracts provided for by Decree No. 81/2015, which include: (i) temporary agency work contracts (sections 30–40); (ii) part-time work (sections 4–12); (iii) fixed-term contracts (sections 19–29); and (iv) apprenticeships (sections 41–47). The Government indicates that the employment relationship and type of contract according to professional category are regulated by the CCNL. It adds that representative organizations of employers and workers were involved during the negotiation of the CCNL, noting that the dock work sector has a longstanding tradition of active involvement by the social partners at the national and local levels. The Committee notes that, pursuant to section 15 of Act No. 84 of 28 January 1994, as amended, the social partners are also members of the commission responsible for the organization of dock work and other relevant tasks. In order to secure the greatest social advantage of new methods of cargo handling, the Government indicates that, in accordance with section 29 of Act No. 164 of 11 November 2014, a Strategic National Plan of Dock Work and Logistics (Piano Strategico Nazionale della Portualità e della Logistica) was launched in 2015. The Strategic Plan seeks to promote the intermodal transport system and is expected to support the economic recovery of the country. The Committee notes that the Plan also established a committee for each port authority (composed of representatives of the public authorities, employers and workers) with socio-economic consultant functions. **The Committee requests the Government to continue to supply up-to-date information on the numbers of dockworkers, disaggregated by sex, age and type of contract, and on variations in their numbers during the reporting period. The Committee would also welcome receiving information regarding the results achieved in implementing the Strategic National Plan of Dock Work and Logistics and the measures taken to promote cooperation between the social partners to improve the efficiency of work in ports (Article 5).**

C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

The Committee notes the communication from the Italian Union of Labour (UIL), the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL) dated 2 October 2012 and the Government's reply thereto.

Part I. Articles 2–7 of the Convention. Addressing migration in abusive conditions. Multilateral and bilateral cooperation. Over the past five years, the Committee has been referring to the serious vulnerability of migrant workers in an irregular situation to violations of their basic human and labour rights. The Committee notes with deep sadness the recent events that took place in Italian territorial waters, near the island of Lampedusa, which led to the death of more than 300 migrant workers. The Committee and the Conference Committee have previously acknowledged the particular challenges faced by Italy in addressing the significant increase in immigration flows and in protecting the basic human rights of migrant workers. They have also recognized that the phenomenon of irregular migration is a complex and global issue, and in the case of Italy of a particularly European nature. The Committee further notes that in their observations, the UIL, CGIL and CISL emphasize the need for more effective and cohesive European governance. The Committee draws the Government's attention to the Declaration of the United Nations High-level Dialogue on International Migration and Development adopted on 1 October 2013 which recognizes the need for international cooperation to address, in a holistic and comprehensive manner, the challenges of irregular migration to ensure safe, orderly and regular migration, with full respect for human rights as well as the need to strengthen synergies between international migration and development at the global, regional and national levels. The Declaration also reaffirms the need to promote and protect effectively the human rights and fundamental freedoms of all migrant workers regardless of their migration status (see A/68/L.5, 1 October 2013, paragraphs 5, 6 and 10). **While recognizing the broader dimension of this phenomenon and the Government's efforts to find solutions to address migration in abusive conditions, particularly in this time of crisis, the Committee requests the Government to continue to take all necessary measures to promote national (through cooperation with workers' and employers' organizations), bilateral, multilateral and regional cooperation to address the issue of irregular migration with full respect of migrant workers' human rights and to prosecute and punish those organizing and assisting in clandestine movements of migrants. Please provide information on any developments in this regard as well as on all the measures adopted at national level to ensure respect, in law and in practice, of the human rights of all migrant workers.**

Articles 1 and 9. Minimum standards of protection. Access to justice. The Committee notes that as a result of routine inspection work by local and regional labour directorates in 2011, in the agriculture, construction, industry and other sectors, more than 2,000 workers in an irregular situation were detected. The Committee further notes that section 1(1)(b) of Legislative Decree No. 109/2012 provides for a six month residence permit on humanitarian grounds for those third country nationals who in cases of "particularly exploitative working conditions", lodge complaints or cooperate in criminal proceedings against employers, at the initiative or with the favourable opinion of the courts. This residence permit may be renewed for one year or the maximum period needed to complete the criminal proceedings. The Government indicates that the irregular situation of migrant workers does not deprive them of their rights in terms of pay, contributions and the provisions in force on working hours and health and safety in the workplace as well as on the principle of non-discrimination. The Committee notes however that the UIL, CGIL and CISL indicate that trade unions have no access to either the Initial Reception Centre or the Asylum Seekers Reception Centre where migrants in an irregular situation are detained which prevents them from assisting and providing information to migrant workers. In this regard, the Committee emphasizes once again that access to justice, including adequate access to assistance and advice, is a basic human right which must be guaranteed to all migrant workers in law and in practice. The Committee highlights in this respect the importance of providing for effective and speedy legal procedures. **The Committee requests the Government to indicate the specific scope of the term "particularly exploitative working conditions" provided for in article 1(1)(b) of Legislative Decree No. 109/2012 and to provide information on how it is ensured in practice that all migrant workers in an irregular situation can seek redress from the courts with respect to violation of their rights arising out of past employment including non-payment or under-payment of wages, social security and other benefits. In order to assess the effectiveness of the mechanisms in place, the Committee once again requests the Government to provide data disaggregated by sex and origin on the number of migrant workers in an irregular situation that have filed administrative or judicial claims with respect to violations of their basic human rights or rights arising out of past employment. The Committee further requests the Government to provide information on the manner in which adequate legal defence for migrant workers in an irregular situation is ensured, including in detention centres. Please also continue to provide information on inspections carried out in the construction and agriculture as well as other sectors to detect illegal employment of migrants and the results achieved.**

Part II. Articles 10 and 12. National policy on equality of opportunity and treatment of migrant workers lawfully in the country. The Committee previously took note of the adoption by the Government of the Plan on Integration in Safety – Identity and Dialogue and requested information on its implementation. The Committee notes that the Government refers to the integration agreements as a new practical instrument under the Plan and indicates that they are still at the launch stage and therefore cannot yet be evaluated. The one-stop-shops for immigration play an important role in the promotion and support services for the training courses that foreign nationals undertake to attend under the integration agreements. The Government further refers to the activities and projects carried out in the framework of the multi-annual programme for the period 2007–13 put in place by the Central Directorate for Immigration and Asylum Policy of the

Italy

Ministry of Interior following wide-ranging consultation of the institutional stakeholders. The Committee observes, however, that no information is provided on the concrete impact and results of the annual programmes that have already been in place since 2007. The Government also provides information on a range of measures aimed at promoting the integration of migrant workers and raising awareness about migration issues. The Committee notes in particular: the “Migrant Integration Portal” which offers a multitude of services to migrant workers, through a public–private network engaged in integration measures; a handbook on “Immigration: How, when, where – the handbook for integration” designed for those that have not yet arrived in Italy; a campaign for music, sports and integration, as well as the Co.In project, intended to help migrant workers to become integrated and Italian society to become aware of the mutual rewards of integration. Measures have also been taken to improve the approach of the media to immigration, including the drafting of a handbook on migration and the mass media and the organization of seminars. The Committee notes, however, that according to UIL, CGIL and CISL, migrant workers continue to be concentrated in the lowest income range (27.5 per cent of Italian and 55.9 of migrant workers) and are the most affected by unemployment. The Committee notes that this is confirmed by the third annual report on migrant workers in the Italian labour market from the Ministry of Labour and Social Policies, according to which the remuneration gap between national and migrant workers has increased considerably in the past years. ***The Committee asks the Government to continue to provide information on developments with respect to the national policy on equality of opportunity and treatment of migrant workers, including cooperation with employers’ and workers’ organizations. The Committee also requests the Government to indicate the impact of the action taken to implement the national policy including the multi-annual programme 2007–13, and any obstacles encountered. Please provide specific information on the measures adopted to address the remuneration gap between national and migrant workers, particularly in sectors where the gap is the highest.***

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.

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

Observation 2017

The Committee notes the observations of the International Organisation of Employers (IOE), received on 2 September 2017, containing the Employers' statements made before the 2017 Conference Committee on the Application of Standards (hereinafter, the Conference Committee).

The Committee further notes the observations on the application of the Convention by the International Trade Union Confederation (ITUC), received on 1 September 2017, referring to issues raised by the Committee below, as well as informing that, on 25 July 2017, Ms Larisa Kharkova, the Chairperson of the now liquidated Confederation of Independent Trade Unions of Kazakhstan (KNPRK) was sentenced to four years of restriction on her freedom of movement, 100 days of compulsory labour and a five-year ban on holding any position in a public or non-governmental organization. The ITUC indicates that earlier in 2017, Mr Amin Eleusinov, the Chairperson of a union affiliated to the KNPRK, and Mr Nurbek Kushakbaev, the Vice-President of the KNPRK, were sentenced to two and two-and-a-half years in prison, respectively and prohibited from engaging in trade union activities after their release. Both were convicted for having called for a strike in response to a court decision to deregister the KNPRK due to its failure to re-register provincial branches in at least nine of the country's 16 regions.

Noting that these cases have been discussed by the Conference Committee in June 2017, the Committee urges the Government to provide its comments thereon without delay.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the discussion that took place in the Conference Committee in June 2017 concerning the application of the Convention. The Committee observes that the Conference Committee noted the grave issues raised, which refer, in particular, to the revocation of the registration of the voluntarily unified KNPRK, as well as the infringement of the employers' freedom of association by the Law on the National Chamber of Entrepreneurs (NCE). The Conference Committee also noted the serious obstacles to the establishment of trade unions without previous authorization in law and in practice. The Conference Committee was concerned over the persistent lack of progress since the discussion of the case in June 2016 despite an ILO direct contacts mission (DCM) visiting the country in September 2016. The Committee notes that the Conference Committee called upon the Government to: (i) amend the provisions of the Trade Union Law of 2014 consistent with the Convention, on issues concerning excessive limitations on the structure of trade unions which limit the right of workers to form and join trade unions of their own choosing; (ii) amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of free and independent employers' organizations, without any further delay. In particular remove the provisions on the broad mandate of the NCE to represent employers and accredit employers' organizations by the NCE; (iii) allow trade unions and employers' organizations to benefit from and participate in joint cooperation projects and activities with international organizations; (iv) amend legislation to lift the ban on financial assistance to national trade unions and employers' organizations by international organizations; (v) take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents; (vi) amend legislation to permit judges, firefighters and prison staff to form and join a workers' organization; and (vii) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee considered that the Government should accept a high-level tripartite mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Judges, firefighters and prison staff. With reference to the conclusions of the Conference Committee, the Committee notes that the Government indicates in its report that the prohibition imposed on judges to become members of trade unions (article 23(2) of the Constitution) does not imply the restriction on their right to establish and join associations of judges. Pursuant to article 23(2) 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 Government points out that the Union of Judges is an organization which represents the interests of judges. The Committee recalls that the DCM had noted that the Union can raise, and has raised in the past, issues relating to working conditions and pensions of judges.

Regarding prison staff and firefighters, the Committee notes the Government's indication that prison staff, as part of the law enforcement bodies, are placed under the responsibility of the Ministry of Interior and as such are prohibited from establishing and joining trade unions. The Committee had previously noted from the DCM's report that among the employees of the law enforcement bodies (which include prison staff and firefighters), only employees who have a military or police rank are prohibited from establishing and joining trade unions. The Committee notes that the Government reiterates that all civilian staff engaged in the law enforcement bodies can establish and join trade unions and recalls in this respect that it had previously noted that these workers were represented by two sectoral trade unions. According to the Government, the Trade Union of Workers of Defence Forces of Kazakhstan represents 11,610 members and a trade union active in the Ministry of Interior, represents 3,970 members. **While taking due note of this information, the Committee requests the Government to provide further clarification on the trade union rights of prison staff and firefighters who have no military or police rank.**

Right to establish organizations without previous authorization. The Committee recalls that following the entry into force of the Law on Trade Unions, all existent unions had to be re-registered. It further recalls that it had previously noted with concern that KNPRK affiliates were denied registration/re-registration. The Committee notes with **deep concern**, from the Conference Committee discussion and the ITUC's 2017 observations, that the KNPRK registration has been revoked despite the assurances given to the DCM by the Ministry of Justice and the Ministry of Labour and Social Development that they would look into this matter and assist the unions, as relevant. **The Committee urges the Government to take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents. It requests the Government to provide information on all developments in this regard.**

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 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 to lower thresholds requirements to establish higher level organizations:

-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 the Government's indication that a working group to improve trade union legislation was established under the auspices of the Ministry of Labour and Social Development. It met in March and April 2017 to discuss the proposed amendments. In May 2017, an interagency commission approved a Concept Draft Law on the amendment of the legislation. In this regard, the Committee notes the intention 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. While welcoming this information, the Committee notes that the proposed amendments do not address the Committee's concerns described above. 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 requests 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 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 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 recalls from the DCM's 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 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 further 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 welcomed the intention of the Government to amend the Labour Code regarding the right to strike by making section 176(1)(1), pursuant to which, strikes shall be deemed illegal when they take place at entities operating hazardous production facilities, more explicit as to which facilities were considered to be hazardous. Currently, "hazardous production facilities" are listed in sections 70 and 71 of the Law on Civil Protection, and can be further determined, pursuant to Order No. 353 of the Minister of Investment and Development (2014), by the enterprise in question. The Committee had noted from the DCM's report that the KNPRK had pointed out that legal strikes did not take place in Kazakhstan as: (i) almost any enterprise could be declared hazardous and the strike therein illegal; and (ii) requests to conduct a strike were submitted to the executive bodies and were denied in practice. The Committee notes that according to the Government, the abovementioned Concept Draft Legislation contains a provision aimed at making the Labour Code more explicit as to the situations where the strike is prohibited. **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.**

The Committee notes with **concern** from the Conference Committee discussions and the information provided by the ITUC that trade union leaders have been convicted and sentenced in application of section 402 of the Criminal Code (2016), according to which 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 requests the Government to provide its comments thereon.** It recalls that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts (see the 2012 General Survey on the fundamental Conventions, paragraph 158). **The Committee requests the Government to take the necessary measures to amend section 402 of the Criminal Code so as to bring it into line with this principle. It requests the Government to indicate 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 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 and employers' organizations by an international organization. The Committee notes the Government's indication that the ban encompasses all financial and material assistance (cars, furniture, etc.) and is needed to safeguard the constitutional order, independence and territorial integrity of the country. The Committee recalls that while the DCM had noted 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, it had considered 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 once again 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.**

[The Government is asked to reply in full to the present comments in 2018.]

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

Observation 2017

Scope of the Convention. The Committee had previously requested the Government to take the necessary measures to amend its legislation so as to ensure that firefighters and prison staff enjoy the right to organize and to bargain collectively. In this respect, with reference to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee notes the Government's indication that prison staff, as part of the law enforcement bodies, are placed under the responsibility of the Ministry of Interior and as such are prohibited from establishing and joining trade unions. The Committee had previously noted from the report of the direct contacts mission (DCM), which visited the country in September 2016 following a request to that effect by the Conference Committee on the Application of Standards in the framework of the application of Convention No. 87, that among the employees of the law enforcement bodies (which include prison staff and firefighters), only employees who have a military or police rank are prohibited from establishing and joining trade unions. The Committee notes that according to the Government and the information contained in the DCM report, all civilian staff engaged in law enforcement bodies can establish and join trade unions and that there are currently two sectoral trade unions representing their interests that can, according to the Government, exercise their right to collective bargaining. **The Committee requests the Government to provide clarification on the trade union rights and rights to collective bargaining of prison staff and firefighters who have no military or police rank and to inform about any collective agreement covering them.**

Article 4 of the Convention. Right to collective bargaining. In its previous comments, the Committee had requested the Government to amend the Labour Code so as to ensure that where there exist in the same undertaking both a trade union representative and another representative elected by workers who are not members of any trade union, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. The Committee notes that while it would appear that pursuant to the new Labour Code, which entered into force on 1 January 2016, other representatives are elected only in the absence of a trade union (sections 1(44) and 20(1)), the Government indicates in its report that workers who are not members of a trade union can either authorize a trade union to represent their interests in collective bargaining or elect other representatives to that effect. The Committee recalls

that under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and with employers and their organizations, collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention (see the 2012 General Survey on the Fundamental Conventions, paragraph 239). **The Committee requests the Government to clarify whether under the new model of collective bargaining provided for by the new Labour Code other representatives can bargain collectively alongside an existing trade union and, if this is the case, to amend the Labour Code so as to bring it into conformity with the Convention.**

The Committee had previously noted that pursuant to section 97(2) of the Code on Administrative Breaches (2014), an unfounded refusal to conclude a collective agreement is punishable by a fine and recalled in this respect that legislation which imposes an obligation to achieve a result, particularly when sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiation. The Committee had requested the Government to repeal this provision and to indicate the measures taken in this respect. The Committee notes with **regret** that no information has been provided by the Government in this respect. **The Committee therefore reiterates its previous request and expresses the hope that the Government's next report will contain information on the measures taken in this respect as well as information on the application of this provision in practice.**

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

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

Observation 2017

The Committee notes with **concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2013.

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

C100 - Equal Remuneration Convention, 1951 (No. 100)*Observation 2017*

The Committee notes the observations of the Free Trade Union Confederation of Latvia (FTUC) attached to the Government's report.

Article 4 of the Convention. Cooperation with workers' and employers' organizations. The Committee notes from the report of the Government that the Tripartite Sub-council on Labour Affairs, on several occasions in 2014 and 2015, reviewed the Recommendation from the European Commission (EC) of 7 March 2014 on strengthening the principle of equal pay for men and women through transparency, with the aim of determining how it could be implemented. The FTUC has identified a number of measures that should be adopted to implement the EC Recommendation including: the insertion of specific provisions in collective agreements; establishment of joint committees with representatives of the employer and trade unions at the undertaking level to develop and introduce a transparent and equal pay system according to objective criteria; promotion of educational activities; and monitoring of the implementation of an equal pay system and any infringements of equal pay. The Committee notes from FTUC's observations that in practice the trade unions are faced occasionally with challenges in ascertaining the full extent of the application of the laws prohibiting discrimination. In particular, FTUC points to the practice, for example in the energy sector, of remuneration systems being classified as confidential and thereby inaccessible to the trade unions except through petitioning the courts, state labour inspectorate or the Ombudsperson. The Committee welcomes that the Tripartite Sub-council on Labour Affairs has taken up the issue of equal pay, and hopes that follow-up action will result in the implementation of specific measures, such as those mentioned by FTUC, to address and reduce the significant gender pay gap in both the public and private sectors. **The Committee recalls that, in general, transparency of pay and promotion structures have been identified as factors that could address pay structure differences and help reduce the gender pay gap. Given the particular difficulties in having access to pay information, the Committee encourages the Government to adopt measures requiring, as much as possible, direct access to information on pay differentials as a means of ensuring transparency, monitoring the pay gap, and as a basis for remedial action, including through the development of a plan addressing equal pay. Such measures are an important means of promoting and ensuring the implementation of the principle of the Convention (see General Survey on the fundamental Conventions, 2012, paragraphs 712 and 723).**

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

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*Observation 2017*

Article 1(2) of the Convention. Discrimination on the basis of national extraction. For a number of years the Committee has been expressing its concern over the discriminatory impact that the language requirements of the Law on State Language 1999 might have on the employment or occupational opportunities of minority groups, including the large Russian-speaking minority. The Committee recalls that section 6(2) of the Law on State Language requires that employees of private institutions, organizations and undertakings (companies), and self-employed persons shall use the official language if their activities "affect the lawful interests of the public" (public security, health, morality, health care, protection of consumer rights and employment rights, safety in the workplace, or supervision of public administration). The Committee also recalls that pursuant to section 6(5) of the Law on State Language, the Cabinet of Ministers Regulation No. 733 of 2009 prescribes the level of proficiency of the Latvian language requirements. The Committee had previously noted that this provision affects a large number of occupations and posts. It had asked the Government to review and revise the list of occupations for which the use of the official language is required under section 6(2) of the Law so as to limit it to cases where language is an inherent requirement of the job. The Government has replied that no such list exists. **Noting that the "lawful interests of the public" even with the limits prescribed in section 6(2) of the Law on State Language 1999 is a broad concept, the Committee asks the Government to consider drawing up a list of occupations (or indicators) which are considered to fall within the scope of section 6(2) thereby clarifying where Latvian language proficiency is considered to be an inherent requirement of the job. In this regard, the Committee emphasizes that the concept of inherent requirements of a particular job provided for in the Convention must be interpreted restrictively so as to avoid any undue limitation on employment and occupational opportunities for any group. The Committee also asks the Government to provide information on Latvian language classes and activities carried out in the country to benefit minority groups including the Russian minority.**

Articles 1(2) and 4. Discrimination on the basis of political opinion. The Committee has been drawing attention to the mandatory requirement in the State Civil Service Act 2000 which provides that to qualify as a candidate for any civil service position, the person concerned must not be or have not been "in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State" (section 7(8)), or "members of organisations banned by laws or court rulings" (section 7(9)). The Committee notes the Government's explanation that the restrictions are intended to ensure a loyal and politically neutral civil service and that they continue to be relevant and necessary. The Government further indicates that these provisions do not apply to all persons in the state administration but only to state civil servants who are persons that carry out functions of national significance such as policy development or the coordination of a sector of activity, or distribute resources or draft laws, and that at the end of 2015 there were only 11,725 such persons. While understanding the Government's concerns and noting its explanations, the Committee draws attention to the fact that the law applies to any state civil service position and to employment by specified services whatever the level of responsibility. The Committee once again recalls that political opinion may be taken into account as an inherent requirement, under *Article 1(2)* of the Convention for posts involving special responsibilities in relation to developing government policy. It once again recalls that for measures not to be discriminatory under *Article 4* of the Convention, they must firstly affect an individual on account of activities he or she is justifiably suspected of having, or has been proven to have, undertaken. These measures become discriminatory when simply based on membership of a particular group or community. Moreover they must refer to activities that can be considered as prejudicial to the security of the State and the individual concerned shall have the right to appeal to a competent body in accordance with national practice (see General Survey on the fundamental Conventions, 2012, paragraphs 832–835). The Committee recalls that the principle of proportionality must apply and the exception under *Article 4* should be interpreted strictly. **The Committee trusts the Government will soon be able to report that it has amended sections 7(8) and 7(9) of the State Civil Service Act or taken other steps to clearly stipulate and define the functions to which these sections apply. It further asks the Government to provide information on the application of sections 7(8) and 7(9) in practice, including information on the number of persons dismissed or whose application has been rejected pursuant to these sections, the reasons for these decisions and the functions concerned, as well as information on the appeal procedure available to the affected persons and any appeals lodged and their results.**

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

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

Observation 2017

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation. The Committee welcomes the provisions of the Act of 3 June 2016 which amend the Labour Code (section L.241-1), the Act of 13 May 2008 on equal treatment for men and women, and the conditions of service for local and central government officials. These provide that “discrimination on the basis of a change of sex shall be deemed equivalent to discrimination on the basis of sex”. However, the Committee notes again that by omitting colour, political opinion, national extraction and social origin, the Labour Code (section L.241-1) and the conditions of service for local and central government officials do not cover all the grounds of discrimination prohibited by the Convention. The Government indicates in its report that section 454 of the Penal Code defines discrimination as “any distinction made between persons on account of their origin, their skin colour, ... their political views ...” and that it considers that the grounds missing for the Labour Code and the conditions of service for local and central government officials are therefore covered. The Committee notes, however, that section L.244-3 of the Labour Code allows a reversal of the burden of proof in labour tribunals where facts exist that allow the existence of discrimination to be presumed, whereas under the Penal Code it is for the complainant to prove the existence of discrimination. In this regard, the Committee considers that criminal prosecution is generally insufficient to eliminate discrimination in the workplace because its particular nature, which arises from the specific features of the work environment (fear of reprisals, loss of employment, hierarchies, etc.) and because of the burden of proof, the latter often being difficult to discharge. In its General Survey of 2012 on the fundamental Conventions, the Committee observes that in the event of a complaint against discrimination, the burden of proof can be a significant obstacle, particularly as much of the information needed in cases involving unfair or discriminatory treatment is in the hands of the employer (paragraph 885). ***In order to enable workers to assert their rights effectively in relation to discrimination based on the grounds listed in the Convention, the Committee asks the Government to take the necessary steps to amend the list of grounds of discrimination prohibited by the Labour Code (section L.241-1); the Act of 16 April 1979 establishing the general conditions of service for central government officials (section 1bis) and the Act of 24 December 1985 establishing the general conditions of service for local government officials (section 1bis) in order to include colour, political opinion, national extraction and social origin. The Committee asks the Government to supply information on the progress made in this respect.***

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

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

Observation 2017

Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes. For a number of years, the Committee has been requesting the Government to amend section 74(1) and (3) of the Employment and Industrial Relations Act, 2002 (EIRA) – according to which, if an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister, who shall refer the dispute to the Industrial Tribunal for settlement – so as to ensure that compulsory arbitration to end a collective labour dispute is only possible 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.

The Committee notes that in its report, the Government indicates that the law aims at providing a speedy solution to labour disputes and that if the onus to resort to the Tribunal was imposed on both parties, they could become reluctant to use the Tribunal and labour relations would further deteriorate. The Government adds that the EIRA does not preclude any of the parties to a dispute to initiate or continue an industrial action even after the trade dispute has been referred to the Tribunal. While taking due note of this information, the Committee observes that the awards of the Industrial Tribunal are binding (section 82(1)) and thus would entail a prohibition of all recourse to an industrial action or a restriction to an ongoing industrial action. The Committee once again recalls in this regard that arbitration to end a collective labour dispute or a strike should only be allowed based on agreement of the parties to the dispute or where the strike may be restricted or prohibited, that is in disputes in the public service involving public servants exercising authority in the name of the State, in essential services in the strict sense of the term or in the event of an acute national crisis. **The Committee, therefore, once again requests the Government to take the necessary measures, in consultation with the social partners, to amend section 74(1) and (3) of the EIRA to ensure respect for the abovementioned principles with regard to compulsory arbitration. It requests the Government to provide information on any developments in this regard.**

Article 9. Armed forces and the police. The Committee notes with *interest* the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amends the EIRA by adding a new section 67A, which gives members of the disciplined forces (defined in the EIRA as armed forces, police, prison service and assistance and rescue force) the right to become members of a registered trade union of their choice. Such a trade union shall not be entitled to limit its membership to any particular rank and shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of its members. **The Committee invites the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions have been formed and registered under this provision and the number of their members, and also whether any requests for such trade union registration are under consideration or have been rejected.**

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

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

Observation 2017

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals submitted 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). Having further noted that public officers could appeal to the Public Service Commission, an independent body established under section 109 of the Constitution of Malta, the Committee requested the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission was empowered to grant such compensatory relief – including reinstatement and back pay – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of portworkers and public transport workers.

The Committee notes the Government's indication that information about compensatory relief in case of anti-union dismissal of public officers is still being sought from the Public Service Commission and will be provided in the near future. The Government further states that a new Legal Notice on Trade Union Recognition, also applicable to Government employees, will enter into force and will contain the following clause: "No person may interfere, intimidate, exert any force or otherwise cause, or threaten to cause, detriment to an employee ... for joining or attempting to join, or for leaving or attempting to leave a union." Recalling that, according to its *Article 6*, public servants not engaged in the administration of the State are covered by the Convention and that the issue of compensatory relief in case of anti-union dismissal of public officers has been pending for over a decade, the Committee *regrets* that the Government has not provided a more substantial reply in this respect. **The Committee thus requests the Government once again to indicate 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 that may affect public officers not engaged in the administration of the State. In addition, the Committee regrets that the Government has again failed to provide any information in relation to portworkers and public transport workers and, therefore, requests it once again to indicate the procedures applicable for the examination of allegations of anti union dismissals of these two categories of workers.**

The Committee further observes that the EIRA does not provide for specific sanctions for acts of anti-union discrimination and that the general sanctions set by section 45(1) – a fine not exceeding €2,329 – would thus apply to such cases. **Considering that this fine might not be sufficiently dissuasive, particularly for large enterprises, the Committee requests the Government to take the necessary measures, after consultation with the social partners, to provide for sufficiently dissuasive sanctions for acts of anti-union discrimination, so as to ensure the application of the Convention.**

Articles 2 and 3. Adequate protection against acts of interference. In its previous observations, the Committee 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. The Committee notes the Government's indication that although the EIRA is silent on this subject, parties who feel wronged by another party's acts of interference can institute a civil action for damages before the courts of civil jurisdiction. While taking due note of this information, the Committee emphasizes the importance of an explicit prohibition of acts of interference of workers' and employers' organizations, their agents or members in each other's establishment, functioning or administration. **The Committee therefore requests the Government to take the necessary measures to introduce such prohibition into the legislation, accompanied by rapid appeal procedures and sufficiently dissuasive sanctions.**

Article 4. Promotion of collective bargaining. The Committee 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. The Committee notes the Government's indication that on the initiative of employee representatives, amendment of section 6 is being tabled for discussion among the social partners in the tripartite Employment Relations Board in the context of a re-examination of the EIRA. **Welcoming this initiative, the Committee trusts that it will assist the Government in taking the necessary measures to amend section 6 of the National Holidays and Other Public Holidays Act in line with the Committee's comments. The Committee requests the Government to provide**

information on any progress in this regard.

Article 5. Armed forces and the police. The Committee notes with **interest** the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amends the EIRA by adding a new section 67A, which gives members of the disciplined forces the right to become members of a registered trade union of their choice. Such a trade union shall not be entitled to limit its membership to any particular rank and shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of its members. **The Committee invites the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions were formed under this provision and whether they were able to participate in collective bargaining.**

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

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the National Confederation of Trade Unions of Moldova (CNSM) in its communication received on 21 August 2017.

Article 4 of Convention No. 81 and Article 7 of Convention No. 129. Supervision and control of a central authority. Occupational safety and health. The Committee notes that the Government indicates in its report that Law No. 131 on state control of entrepreneurial activities of 2012 withdraws some competencies and supervisory duties in the area of occupational safety and health from the State Labour Inspectorate and transfers them to ten supervision entities, including the National Agency for Food Safety, the Agency for Consumer Protection and Market Supervision, the National Agency for Public Health, the Environmental Protection Inspectorate, the National Agency for Motor Transportation, the National Agency for Energy Regulation, and the National Agency for Electronic Communications and Information Technology. These agencies will monitor occupational safety and health issues for those enterprises regulated by legislation under their purview. With respect to other areas of activity, the Agency for Technical Supervision is responsible for supervising occupational safety and health issues. The Committee also notes the information provided by the Government indicating that labour inspectors responsible for checking occupational safety and health will be appointed in sectoral agencies. These inspectors will report to their respective agencies as well as to the State Labour Inspectorate. The Government further indicates that the State Labour Inspectorate will develop procedural guidelines and checklists for inspectors as well as a platform for their training.

In this respect, the Committee notes the observations of the CNSM that the scattering of control duties in the field of occupational safety and health results in a lack of an institutional framework for the inspection of such issues.

The Committee recalls that *Article 4 of Convention No. 81 and Article 7 of Convention No. 129* provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. It recalls in this respect, that it indicated in its General Survey of 2006 on labour inspection that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140, 141 and 152). **Recalling the importance of ensuring that organizational changes are carried out in conformity with the provisions of Conventions Nos 81 and 129, including Articles 4, 6, 9, 10, 11 and 16 of Convention No. 81 and Articles 7, 8, 11, 14, 15 and 21 of Convention No. 129 (concerning supervision and control by a central authority; stability of employment and independence; the association of duly qualified technical occupational safety and health experts and specialists; ensuring a sufficient number of inspectors to secure the effective discharge of their duties; the provision of suitably equipped local offices and transport facilities; and the undertaking of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions), the Committee urges the Government to take all necessary measures in that respect.**

With reference to its comments on the Occupational Safety and Health Convention, 1981 (No. 155), the Committee accordingly requests the Government to provide further information on the measures taken to ensure coordination among the various sectoral authorities with respect to inspections related to occupational safety and health issues, as well as between these authorities and the State Labour Inspectorate. It requests additional information on the monitoring of enterprises not covered by the respective sectoral agencies and, in particular, of coverage of the agricultural sector. It requests the Government to provide information on: (1) the measures taken or envisaged to ensure the allocation of sufficient budgetary and human resources with a view to securing the enforcement of the legal provisions relating to occupational safety and health; and (2) the number of inspectors appointed in the sectoral bodies as well as the number of inspections undertaken by them (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129). It requests the Government to indicate how the independence and impartiality of labour inspectors appointed in the sectoral bodies is ensured in light of their reporting to the management of the sectoral bodies (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). It requests the Government to provide information on the manner in which technical occupational safety and health experts and specialists are associated in the work of inspection (Article 9 of Convention No. 81 and Article 11 of Convention No. 129), the measures taken to provide such inspectors with suitably equipped local offices as well as the transport facilities necessary for the performance of their duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129), and on the manner in which it ensures that the activities undertaken by these inspectors are reflected in the annual report on labour inspection (Articles 20 and 21 of Convention No. 81 and Articles 25–27 of Convention No. 129).

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 23 and 24 of Convention No. 129. Cooperation with the justice system and adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee previously noted the information in the Government's annual labour inspection reports that the State Labour Inspectorate drew up 891 infringement reports in 2012 for submission to court, 514 such reports in 2013 and 434 in 2014. It notes in this respect the information in the Government's report that, in 2016, labour inspectors drew up and filed 165 infringement reports. **Noting the significant decline between 2012 and 2016 in the number of infringement reports submitted to courts, the Committee once again requests the Government to provide information on the reasons for this trend. It also requests the Government to provide information on the specific outcome of the infringement reports submitted to the courts, indicating the decision rendered and if any fine or other penalty was applied.**

Article 12 of Convention No. 81 and Article 16 of Convention No. 129. Unannounced inspection visits. The Committee previously noted that the report of the tripartite committee set up to examine the representation alleging non observance by the Republic of Moldova of Convention No. 81 submitted under article 24 of the ILO Constitution, adopted by the Governing Body in March 2015 (GB.323/INS/11/6), found that the application of Law No. 131 to the State Labour Inspectorate (pursuant to paragraph 27 of its annex) raised issues of compatibility with *Article 12 of Convention No. 81*, in restricting the free access of labour inspectors to undertake inspections. In particular, the report of the tripartite committee noted that section 18(1) of Law No. 131 provides that notice of the decision to carry out a control shall be sent to the entity subject to control at least five working days prior to the carrying out of the control. Section 18(2) provides that this notice is not provided in the case of an unannounced control, and section 19 outlines the specific limited circumstances under which an unannounced control can be undertaken irrespective of the established schedule of control. In this regard, the tripartite committee's report stated that the restrictions on the undertaking of unannounced inspections contained in sections 18 and 19 of Law No. 131 were incompatible with the requirements in *Article 12(1)(a) and (b) of Convention No. 81*. These restrictions are similarly incompatible with the requirements of *Article 16(1)(a) and (b) of Convention No. 129*.

The Committee notes the observations of the CNSM that although the Government has taken some measures to adapt the national legislation to the provisions of *Article 12 of Convention No. 81*, it still contains serious limitations on labour inspection activity. It notes the statement of the Government that with respect to planned controls, there is an awareness of the existing contradiction between the general rules for initiating an inspection (sections 14 and 20–23 of Law No. 131) and the provisions of *Article 12*. The Government indicates that this inconsistency will be removed as part of a legislative package to be adopted by Parliament, as a second phase in the reform of inspections. In particular, it indicates that it plans to provide for certain exemptions in respect of the obligation to provide prior notification five days before an inspection. **Recalling the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee urges the Government to pursue its efforts to amend Law No. 131 to ensure that labour inspectors are empowered in line with Article 12(1)(a) and (b) of Convention No. 81 and Article 16(1)(a) and (b) of Convention No. 129 to make visits without previous notice. It requests the Government to provide detailed information on the measures taken and to provide a copy**

of any legislative texts adopted in this regard.

Articles 15(c) and 16 of Convention No. 81 and Articles 20(c) and 21 of Convention No. 129. Confidentiality concerning the fact that an inspection visit was made in response to the receipt of a complaint. The Committee notes the information in the Government's report concerning the number of unscheduled inspections undertaken in 2015 and 2016, which indicates that such inspections were undertaken as a result of a complaint or to conduct an investigation following an accident. The Committee recalls that pursuant to Law No. 131, enterprises receive notice of inspections five days in advance for all inspections except unscheduled inspections. In this respect, the Committee recalls that in order to better guarantee confidentiality regarding any connection between a complaint and an inspection visit, it is important to ensure that a sufficient number of unannounced inspection visits are conducted independent of complaints or accidents. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure that a sufficient number of unscheduled inspections are undertaken to ensure that when inspections are conducted as a result of a complaint, the fact of the complaint as well as the identity of the complainant(s) is kept confidential.**

Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Undertaking of inspections as often as is necessary to ensure the effective application of the relevant legal provisions. The Committee previously noted, in light of the report of the tripartite committee, that certain provisions of Law No. 131 were not compatible with the principle contained in Article 16 of Convention No. 81. In particular, pursuant to section 14 of Law No. 131, control bodies are not entitled to perform a control of the same entity more than once in a calendar year, with the exception of unannounced inspections. Section 15 provides that each authority with supervisory functions shall develop a yearly plan for inspections which cannot be altered that indicates by quarter when an inspection is foreseen, and that it is not possible to perform an inspection not foreseen in the schedule. The Committee noted that the undertaking of inspection visits according to a schedule is not incompatible with Convention No. 81 to the extent that this schedule does not preclude the undertaking of a sufficient number of unscheduled visits, but that the particular limitations on the carrying out of unscheduled inspections contained in section 19 of Law No. 131 constituted an impediment to the carrying out of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. It further noted that the limitations contained in section 3(g) of Law No. 131, that inspections can only be carried out when other means to verify compliance with the law have been exhausted, was not in conformity with Article 16 of Convention No. 81. The Committee subsequently noted the observations of the CNSM that Law No. 18, adopted on 4 March 2016, introduced a moratorium on, among other things, labour inspection for the period 1 April to 31 July 2016.

The Committee notes the Government's indication that the existing framework does not expressly or implicitly limit the number of inspections which can be carried out in respect of an economic agent. Section 14 of Law No. 131 states that the inspection body must plan a maximum of one inspection per year unless the applied risk-based methodology requires a higher frequency, and for unscheduled inspections there is no limit at all. In addition, any follow-up inspection concerning violations will not be considered as a separate inspection. The Committee notes in this respect the information provided by the Government that, in 2015, 4,883 scheduled inspections were undertaken and 1,317 unscheduled inspections (arising from the investigation of complaints or accidents), as well as 117 follow up inspections. In 2016, this fell to 3,665 scheduled inspections, 610 unscheduled inspections and 42 follow-up inspections.

The Committee takes due note of the Government's explanations concerning the use of a risk-based methodology as well as the number of unscheduled inspections undertaken. However, it notes that Law No. 131 permits unscheduled inspections only under certain specific conditions: they are subject to a delegation of control signed by the head authority vested with control functions; they cannot be carried out on the basis of unverified information and information received from anonymous sources; and they cannot be conducted when there are any other direct or indirect ways to obtain the information needed (sections 7 and 19). The Committee also notes that Law No. 230 amending and supplementing certain legislative acts of 2016 further amended Law No. 141 on labour inspection to remove the possibility of undertaking inspections as often as necessary to ensure compliance with the legislative provisions concerning occupational safety and health. **Recalling with regret that it has been requesting action in this respect since 2015, the Committee urges the Government to take the necessary measures to ensure that the national legislation is amended in the near future to allow for the undertaking of labour inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Further, recalling that any moratorium placed on labour inspection is a serious violation of these Conventions, the Committee requests the Government to ensure that no further restrictions of this nature are placed on labour inspection in the future.**

Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Prompt legal or administrative proceedings The Committee notes that section 4(1) of Law No. 131 provides that inspections during the first three years of the operation of a company/employer shall be of a consultative nature. The Committee notes with **concern** that section 5(4) provides that in the event of minor violations, the sanctions provided for in the Administrative Offence Law or other laws may not be applied and, moreover, that section 5(5) provides that restrictive measures may not be applied in the event of severe violations. In this regard, the Committee recalls that Article 17 of Convention No. 81 and Article 22 of Convention No. 129 provides that, with certain exceptions, legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure that labour inspectors are able to initiate or recommend immediate legal proceedings. The Committee also requests the Government to provide information on the meaning of "restrictive measures" that are prohibited from being imposed under Law No. 131, the number and nature of severe violations detected by inspectors, the sanctions proposed by inspectors, and the penalties ultimately applied.**

Issues specifically concerning labour inspection in agriculture

Article 9(3) of Convention No. 129. Adequate training for labour inspectors in agriculture. **The Committee once again requests the Government to provide information on the training provided to labour inspectors that relates specifically to their duties in the agricultural sector, including the number of training programmes organized and the number of inspectors who participated in these programmes.**

[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]

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

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the National Confederation of Trade Unions of Moldova (CNSM) in its communication received on 21 August 2017.

Article 4 of Convention No. 81 and Article 7 of Convention No. 129. Supervision and control of a central authority. Occupational safety and health. The Committee notes that the Government indicates in its report that Law No. 131 on state control of entrepreneurial activities of 2012 withdraws some competencies and supervisory duties in the area of occupational safety and health from the State Labour Inspectorate and transfers them to ten supervision entities, including the National Agency for Food Safety, the Agency for Consumer Protection and Market Supervision, the National Agency for Public Health, the Environmental Protection Inspectorate, the National Agency for Motor Transportation, the National Agency for Energy Regulation, and the National Agency for Electronic Communications and Information Technology. These agencies will monitor occupational safety and health issues for those enterprises regulated by legislation under their purview. With respect to other areas of activity, the Agency for Technical Supervision is responsible for supervising occupational safety

and health issues. The Committee also notes the information provided by the Government indicating that labour inspectors responsible for checking occupational safety and health will be appointed in sectoral agencies. These inspectors will report to their respective agencies as well as to the State Labour Inspectorate. The Government further indicates that the State Labour Inspectorate will develop procedural guidelines and checklists for inspectors as well as a platform for their training.

In this respect, the Committee notes the observations of the CNSM that the scattering of control duties in the field of occupational safety and health results in a lack of an institutional framework for the inspection of such issues.

The Committee recalls that *Article 4* of Convention No. 81 and *Article 7* of Convention No. 129 provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. It recalls in this respect, that it indicated in its General Survey of 2006 on labour inspection that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140, 141 and 152). **Recalling the importance of ensuring that organizational changes are carried out in conformity with the provisions of Conventions Nos 81 and 129, including Articles 4, 6, 9, 10, 11 and 16 of Convention No. 81 and Articles 7, 8, 11, 14, 15 and 21 of Convention No. 129 (concerning supervision and control by a central authority; stability of employment and independence; the association of duly qualified technical occupational safety and health experts and specialists; ensuring a sufficient number of inspectors to secure the effective discharge of their duties; the provision of suitably equipped local offices and transport facilities; and the undertaking of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions), the Committee urges the Government to take all necessary measures in that respect.**

With reference to its comments on the Occupational Safety and Health Convention, 1981 (No. 155), the Committee accordingly requests the Government to provide further information on the measures taken to ensure coordination among the various sectoral authorities with respect to inspections related to occupational safety and health issues, as well as between these authorities and the State Labour Inspectorate. It requests additional information on the monitoring of enterprises not covered by the respective sectoral agencies and, in particular, of coverage of the agricultural sector. It requests the Government to provide information on: (1) the measures taken or envisaged to ensure the allocation of sufficient budgetary and human resources with a view to securing the enforcement of the legal provisions relating to occupational safety and health; and (2) the number of inspectors appointed in the sectoral bodies as well as the number of inspections undertaken by them (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129). It requests the Government to indicate how the independence and impartiality of labour inspectors appointed in the sectoral bodies is ensured in light of their reporting to the management of the sectoral bodies (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). It requests the Government to provide information on the manner in which technical occupational safety and health experts and specialists are associated in the work of inspection (Article 9 of Convention No. 81 and Article 11 of Convention No. 129), the measures taken to provide such inspectors with suitably equipped local offices as well as the transport facilities necessary for the performance of their duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129), and on the manner in which it ensures that the activities undertaken by these inspectors are reflected in the annual report on labour inspection (Articles 20 and 21 of Convention No. 81 and Articles 25–27 of Convention No. 129).

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 23 and 24 of Convention No. 129. Cooperation with the justice system and adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee previously noted the information in the Government's annual labour inspection reports that the State Labour Inspectorate drew up 891 infringement reports in 2012 for submission to court, 514 such reports in 2013 and 434 in 2014. It notes in this respect the information in the Government's report that, in 2016, labour inspectors drew up and filed 165 infringement reports. **Noting the significant decline between 2012 and 2016 in the number of infringement reports submitted to courts, the Committee once again requests the Government to provide information on the reasons for this trend. It also requests the Government to provide information on the specific outcome of the infringement reports submitted to the courts, indicating the decision rendered and if any fine or other penalty was applied.**

Article 12 of Convention No. 81 and Article 16 of Convention No. 129. Unannounced inspection visits. The Committee previously noted that the report of the tripartite committee set up to examine the representation alleging non observance by the Republic of Moldova of Convention No. 81 submitted under article 24 of the ILO Constitution, adopted by the Governing Body in March 2015 (GB.323/INS/11/6), found that the application of Law No. 131 to the State Labour Inspectorate (pursuant to paragraph 27 of its annex) raised issues of compatibility with *Article 12* of Convention No. 81, in restricting the free access of labour inspectors to undertake inspections. In particular, the report of the tripartite committee noted that section 18(1) of Law No. 131 provides that notice of the decision to carry out a control shall be sent to the entity subject to control at least five working days prior to the carrying out of the control. Section 18(2) provides that this notice is not provided in the case of an unannounced control, and section 19 outlines the specific limited circumstances under which an unannounced control can be undertaken irrespective of the established schedule of control. In this regard, the tripartite committee's report stated that the restrictions on the undertaking of unannounced inspections contained in sections 18 and 19 of Law No. 131 were incompatible with the requirements in *Article 12(1)(a)* and *(b)* of Convention No. 81. These restrictions are similarly incompatible with the requirements of *Article 16(1)(a)* and *(b)* of Convention No. 129.

The Committee notes the observations of the CNSM that although the Government has taken some measures to adapt the national legislation to the provisions of *Article 12* of Convention No. 81, it still contains serious limitations on labour inspection activity. It notes the statement of the Government that with respect to planned controls, there is an awareness of the existing contradiction between the general rules for initiating an inspection (sections 14 and 20–23 of Law No. 131) and the provisions of *Article 12*. The Government indicates that this inconsistency will be removed as part of a legislative package to be adopted by Parliament, as a second phase in the reform of inspections. In particular, it indicates that it plans to provide for certain exemptions in respect of the obligation to provide prior notification five days before an inspection. **Recalling the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee urges the Government to pursue its efforts to amend Law No. 131 to ensure that labour inspectors are empowered in line with Article 12(1)(a) and (b) of Convention No. 81 and Article 16(1)(a) and (b) of Convention No. 129 to make visits without previous notice. It requests the Government to provide detailed information on the measures taken and to provide a copy of any legislative texts adopted in this regard.**

Articles 15(c) and 16 of Convention No. 81 and Articles 20(c) and 21 of Convention No. 129. Confidentiality concerning the fact that an inspection visit was made in response to the receipt of a complaint. The Committee notes the information in the Government's report concerning the number of unscheduled inspections undertaken in 2015 and 2016, which indicates that such inspections were undertaken as a result of a complaint or to conduct an investigation following an accident. The Committee recalls that pursuant to Law No. 131, enterprises receive notice of inspections five days in advance for all inspections except unscheduled inspections. In this respect, the Committee recalls that in order to better guarantee confidentiality regarding any connection between a complaint and an inspection visit, it is important to ensure that a sufficient number of unannounced inspection visits are conducted independent of complaints or accidents. **The Committee requests the Government to provide information on the measures taken or envisaged to ensure that a sufficient number of unscheduled inspections are undertaken to ensure that when inspections are conducted as a result of a complaint, the fact of the complaint as well as the identity of the complainant(s) is kept confidential.**

Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Undertaking of inspections as often as is necessary to ensure the effective application of the relevant legal provisions. The Committee previously noted, in light of the report of the tripartite committee, that certain provisions of Law No. 131 were not compatible with the principle contained in *Article 16* of Convention No. 81. In particular, pursuant to section 14 of Law No. 131, control bodies are not entitled to perform a control of the same entity more than once in a calendar year, with the exception of unannounced inspections. Section 15 provides that each authority

with supervisory functions shall develop a yearly plan for inspections which cannot be altered that indicates by quarter when an inspection is foreseen, and that it is not possible to perform an inspection not foreseen in the schedule. The Committee noted that the undertaking of inspection visits according to a schedule is not incompatible with Convention No. 81 to the extent that this schedule does not preclude the undertaking of a sufficient number of unscheduled visits, but that the particular limitations on the carrying out of unscheduled inspections contained in section 19 of Law No. 131 constituted an impediment to the carrying out of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. It further noted that the limitations contained in section 3(g) of Law No. 131, that inspections can only be carried out when other means to verify compliance with the law have been exhausted, was not in conformity with *Article 16* of Convention No. 81. The Committee subsequently noted the observations of the CNSM that Law No. 18, adopted on 4 March 2016, introduced a moratorium on, among other things, labour inspection for the period 1 April to 31 July 2016.

The Committee notes the Government's indication that the existing framework does not expressly or implicitly limit the number of inspections which can be carried out in respect of an economic agent. Section 14 of Law No. 131 states that the inspection body must plan a maximum of one inspection per year unless the applied risk-based methodology requires a higher frequency, and for unscheduled inspections there is no limit at all. In addition, any follow-up inspection concerning violations will not be considered as a separate inspection. The Committee notes in this respect the information provided by the Government that, in 2015, 4,883 scheduled inspections were undertaken and 1,317 unscheduled inspections (arising from the investigation of complaints or accidents), as well as 117 follow up inspections. In 2016, this fell to 3,665 scheduled inspections, 610 unscheduled inspections and 42 follow-up inspections.

The Committee takes due note of the Government's explanations concerning the use of a risk-based methodology as well as the number of unscheduled inspections undertaken. However, it notes that Law No. 131 permits unscheduled inspections only under certain specific conditions: they are subject to a delegation of control signed by the head authority vested with control functions; they cannot be carried out on the basis of unverified information and information received from anonymous sources; and they cannot be conducted when there are any other direct or indirect ways to obtain the information needed (sections 7 and 19). The Committee also notes that Law No. 230 amending and supplementing certain legislative acts of 2016 further amended Law No. 141 on labour inspection to remove the possibility of undertaking inspections as often as necessary to ensure compliance with the legislative provisions concerning occupational safety and health. ***Recalling with regret that it has been requesting action in this respect since 2015, the Committee urges the Government to take the necessary measures to ensure that the national legislation is amended in the near future to allow for the undertaking of labour inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Further, recalling that any moratorium placed on labour inspection is a serious violation of these Conventions, the Committee requests the Government to ensure that no further restrictions of this nature are placed on labour inspection in the future.***

Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Prompt legal or administrative proceedings The Committee notes that section 4(1) of Law No. 131 provides that inspections during the first three years of the operation of a company/employer shall be of a consultative nature. The Committee notes with **concern** that section 5(4) provides that in the event of minor violations, the sanctions provided for in the Administrative Offence Law or other laws may not be applied and, moreover, that section 5(5) provides that restrictive measures may not be applied in the event of severe violations. In this regard, the Committee recalls that *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 provides that, with certain exceptions, legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. ***The Committee requests the Government to provide information on the measures taken or envisaged to ensure that labour inspectors are able to initiate or recommend immediate legal proceedings. The Committee also requests the Government to provide information on the meaning of "restrictive measures" that are prohibited from being imposed under Law No. 131, the number and nature of severe violations detected by inspectors, the sanctions proposed by inspectors, and the penalties ultimately applied.***

Issues specifically concerning labour inspection in agriculture

Article 9(3) of Convention No. 129. Adequate training for labour inspectors in agriculture. ***The Committee once again requests the Government to provide information on the training provided to labour inspectors that relates specifically to their duties in the agricultural sector, including the number of training programmes organized and the number of inspectors who participated in these programmes.***

[The Government is asked to supply full particulars to the Conference at its 107th Session and to reply in full to the present comments in 2018.]

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 and the Government's reply thereto. It recalls that the issues raised by the ITUC were examined by the Committee on Freedom of Association (CFA) in Case No. 3140 in March 2016 (Report No. 377) and that the case is currently in follow-up by the CFA. The Committee also notes the observations of the Montenegrin Employer Federation (MEF) and the International Organisation of Employers (IOE) received on 30 November 2017.

Article 1 of the Convention. Adequate protection against anti-union discrimination. The Committee previously noted that while the Labour Law provides protection against acts of direct and indirect discrimination of persons seeking employment and employed persons on the ground of membership in trade union organizations (sections 5–10) and protection against acts of anti-union discrimination of trade union representatives up to six months after termination of trade union activities (section 160), it did not provide for fines in case of infringement of these provisions. The Committee notes the Government's statement that its work programme foresees the adoption of a new Law on the Representativeness of Trade Unions by the end of 2017. The Government indicates that the draft of this Law was drawn up within a working group composed of representatives of the Ministry of Labour and Social Welfare and the social partners, particularly the Union of Employers of Montenegro, the Union of Free Trade Unions of Montenegro and the Confederation of Trade Unions of Montenegro. The Government indicates that this new Law will provide sanctions, including appropriate fines, regarding acts of anti-union discrimination against trade union members and officials based on trade union membership or legitimate union activities. **Further noting the Government's indication that the drafting of a new Labour Law is ongoing, the Committee requests the Government to pursue its efforts to amend the legislation so as to ensure the provision of sufficiently dissuasive sanctions – including dissuasive fines – for acts of anti-union discrimination against union members and officials on the grounds of trade union membership or legitimate trade union activities. It requests the Government to provide a copy of the new Law on the Representativeness of Trade Unions, once adopted.**

Article 2. Adequate protection against interference. In its previous comments, the Committee noted that there was no explicit provision against acts of interference by employers or employers' organizations in the establishment, functioning and administration of trade unions and vice versa. The Committee notes once again that the Government refers to sections 154 and 159 of the Labour Law, which provide that employees and employers shall be entitled, at their free choice, without prior approval, to establish their organizations and become members (section 154) and that the employer shall enable employees to freely exercise their trade union rights and provide the trade union organization with conditions for efficient performance of trade union activities (section 159). The Government further refers to section 172(33) of the Labour Law, which provides for a financial penalty if the employer fails to provide employees with the free exercise of trade union rights, or fails to provide the trade union with the conditions for exercising trade union rights. The Committee once again observes that the provisions do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. **Noting the Government's indication that there is an ongoing labour law reform, the Committee once again requests the Government to take measures to adopt specific legislative provisions prohibiting acts of interference on the part of the employer or employers' organizations as defined in Article 2(2) of the Convention and making express provision for rapid appeal procedures, accompanied with effective and sufficiently dissuasive sanctions.**

Article 4. Promotion of collective bargaining. General Collective Agreement. The Committee previously requested the Government to take measures to amend sections 149 and 150 of the Labour Law, specifying the general collective agreement shall be signed between the representative trade union organization, a relevant body of the representative employers' federation and the Government, so as to ensure that the Government may only participate in the negotiation of a general collective agreement on issues linked to the minimum wage, (and that matters relating to other terms of employment are subject only to bipartite collective bargaining between employers and their organizations and workers' organizations.) The Committee notes the Government's statement that the drafting of a new Labour Law is ongoing, and that in that context, the representatives of the social partners agreed that the Government should participate in the negotiations on the conclusion of the General Collective Agreement. The Committee also notes that the General Collective Agreement covers both the public and private sectors. The Committee once again recalls that *Article 4* of the Convention envisages collective bargaining between employers and their organizations and workers' organizations in a bipartite structure. As a consequence, the participation of the Government would be justifiable if it is limited: (i) to the establishment of the minimum wage rate; and (ii) to its capacity as an employer with respect to public sector workers, whereas the negotiation of the other terms of employment should take place in a bipartite context with the parties enjoying full autonomy in this regard. **The Committee requests the Government to provide further information on the consultations undertaken with respect to the involvement of the Government in the negotiation of the General Collective Agreement, as well as to provide a copy of the new Labour Law, once adopted.**

Representativeness of employers' federations. In its previous comments, the Committee noted that section 161 of the Labour Law provides that an employers' federation shall be considered as representative if its members employ a minimum of 25 per cent of employees in the economy of Montenegro and participate in the gross domestic product of Montenegro with a minimum of 25 per cent and that, should no association meet these requirements, employers may make an agreement to participate directly in the conclusion of a collective agreement. The Committee requested the Government to take measures to either substantially reduce or repeal these minimums. The Committee notes the Government's statement that the drafting of the new Labour Law is ongoing, and that the recommendations of the Committee will be presented to the social partners within the working group.

The Committee also notes that the MEF and the IOE consider that the established thresholds are adequate to define the representativeness of an employers' organization. The organizations further indicate that: (i) a company can decide to affiliate to one or more employers' organizations, meaning that the 25 per cent threshold should not be read in a horizontal manner and that more than four employers' organizations can be established in the country; and (ii) there is one representative employers' organization in the country – (the MEF) as well as a number of other business organizations. **Taking due note of the Government's reply and the indications of the MEF and the IOE, the Committee requests the Government to provide information on the consultations undertaken with the social partners in the context of the elaboration of the Labour Law on the minimum requirements established for an employers' association to be considered as representative.**

The Committee previously noted that pursuant to section 12 of the Rulebook on the manner and procedure for registering employers and determining their representation (No. 34/05), the affiliation of employers' associations to international or regional employers' confederations is a prerequisite for them to be considered as being representative at the national level, and it requested that measures be taken to amend the Rulebook. In this respect, the Committee notes the Government's statement that, following the adoption of the new Labour Law, new regulations will be drafted, and the Committee's recommendation will be taken into account in that context. In this respect, the Committee notes the statement of the MEF and the IOE that this requirement is necessary to avoid the establishment of a multiplicity of non-independent employers' organizations, and that it is only a prerequisite concerning participation in national tripartite social dialogue institutions, national tripartite bodies, or to participate in international meetings. The IOE and the MEF highlight that organizations like the IOE do not award exclusive membership rights and, in various countries, it has different employers' organizations as a member. **Recalling that for an employers' association to be able to negotiate a collective agreement, it should suffice to establish that it is sufficiently representative at the appropriate level, regardless of its international or regional affiliation or non-affiliation, the Committee invites the Government to pursue, in the context of the current labour law reform, the consultations with the social partners covered so as to ensure that the prerequisites for employers' organizations to bargain at the national level are in line with the Convention.**

The Committee reminds the Government that the technical assistance of the Office remains at its disposal, if it so wishes, as regards the legal issues raised in this observation.

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

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

Observation 2017

Article 1(b) of the Convention. Work of equal value. Legislation. In its previous request, the Committee noted that, while the Law on Amendments to the Labour Act of 2011 explicitly provides, in section 77(2), for the principle of equal remuneration for work of equal value by guaranteeing each employed man or woman an equal wage for equal work or work of the same value performed with an employer, section 77(3) of the same Law continues to limit the concept of work of equal value to the same level of education, or professional qualifications, responsibility, skills, conditions and results of work. The Committee also drew the Government's attention to the fact that the expression "with an employer" in section 77(2) of the Labour Law limits the application of the principle of equal remuneration to workers employed by the same employer. It had asked the Government to take the necessary steps so as to ensure that the legislation provides for equal remuneration not only between men and women workers undertaking the same or similar work, but also where men and women perform different work (including under different conditions and even in different establishments) that is nevertheless of equal value in its totality. In its report, the Government indicates that the Committee's comments on the concept of work of equal value, in particular section 77 of the Labour Law, will be considered by the tripartite Working Group established for the revision of the new Labour Law, which is envisaged under the Action Plan for negotiating Chapter 19 on social policy and employment and scheduled for adoption in the last quarter of 2017. The Committee wishes to draw the Government's attention to the fact that the concept of work of equal value entails comparing the relative value of jobs or occupations that may involve different types of skills, responsibilities or working conditions that nevertheless are of equal value in its totality (see General Survey on the fundamental Conventions, 2012, paragraphs 673, 675, and 677). ***Consequently, the Committee urges the Government to seize the opportunity presented by the current revision of the Labour Law to amend section 77 so as to give full legislative expression to the principle of the Convention. It also requests the Government to provide information on all measures taken to this end.***

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

C081 - Labour Inspection Convention, 1947 (No. 81)**Observation 2017**

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the joint observations made by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP) on Conventions Nos 81 and 129, received on 31 August 2017, reiterating that no noticeable improvements in the application of the Conventions have occurred following the recommendations in the report of the tripartite committee adopted by the Governing Body at its 322nd Session (November 2014) concerning the representation made under article 24 of the ILO Constitution relating to Conventions Nos 81 and 129 and the Occupational Safety and Health Convention, 1981 (No. 155). In this respect, the Committee notes that the trade unions emphasize that they appreciate the exchange and work with the labour inspectorate, but that the Government does not provide sufficient means to the labour inspectorate.

Articles 3, 10 and 16 of Convention No. 81 and Articles 6, 14 and 21 of Convention No. 129. Number of labour inspectors and the frequency of labour inspections to ensure the effective discharge of inspection duties. Workload of labour inspectors. Time spent on administrative tasks. The Committee recalls that the tripartite committee in its report requested the Government to ensure that the number and frequency of labour inspections is sufficient to ensure the effective discharge of inspection duties and compliance with the respective legal provisions in all workplaces, particularly in enterprises that are not considered to be in high-risk sectors, and in small enterprises. The tripartite committee also encouraged the Government to ensure that administrative tasks entrusted to labour inspectors do not affect the effective discharge of their primary duties, in accordance with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129.

The Committee notes the observations made by the FNV, the CNV and the VCP that only 3.5 per cent of companies in high-risk sectors are inspected (where vulnerable categories like migrant workers are overrepresented), that the labour inspectorate is extremely understaffed and would require at least an additional 100 full-time labour inspectors as a result of having to deal with an extreme workload (due to an increase in the number of occupational accidents, the increasing scope of inspections and the increasing complexity of labour market fraud). The organizations indicate that if the capacity of the labour inspectorate is not substantially increased, there is a significant risk that workers will be exploited.

The Committee notes the information provided in the Government's report that the number of labour inspections has continued to decrease to 21,138 in 2015 and 18,910 in 2016 (continuing the decreasing trend previously noted, from 39,610 inspections in 2005 to 22,641 in 2014). In this regard, the Committee also notes the Government's indication that, since 2015, an increased focus has been placed on the social impact of labour inspection activities, with the number of inspections remaining important, but no longer being an objective in itself. The Committee also notes that the Government confirms the reiterated observations made by the FNV, the CNV and the VCP relating to an increased workload as a result of the need of labour inspectors to deal with an increasing number of legal objections and appeals from employers against the decisions and actions of the labour inspectorate. In this respect, the Committee notes the Government's reiterated indication that the inspectorate intends to reduce the time spent on administrative tasks as much as possible and that inspectors are encouraged to address inefficient work processes and administrative loads and make proposals for the improvement of the inspectorate's management.

The Committee finally notes the Government's indication that the capacity of the labour inspectorate was subject to an independent assessment carried out at the request of Parliament in 2016. The Government states that the assessment found that annual plans and multi-annual plans of the inspectorate were well developed and based on sound risk evaluations. The assessment noted that determining whether the inspectorate had sufficient capacity required further information and depended on more explicit goal setting. ***The Committee once again requests the Government to ensure a sufficient number of labour inspectors and labour inspections to achieve adequate coverage of workplaces liable to inspection for the effective discharge of inspection duties. In this respect, the Committee requests the Government to provide information on any follow-up measures taken following the assessment of the capacity of the labour inspectorate in 2016, as well as any measures taken or contemplated to facilitate labour inspectors' capacity to fulfil their duties in light of the increasing number of legal objections and appeals from employers.***

Noting the Government's indication that it focuses on the social impact of labour inspection activities, the Committee requests the Government to provide information on the meaning of the term "social impact" in this context as well as on how such impact is measured, and requests it to continue to provide labour inspection statistics (including on the number of labour inspectors, the number of workplaces liable to inspection and the workers employed therein, the number of labour inspections, the number of violations detected and the penalties imposed, as well as the number of industrial accidents and cases of occupational disease). The Committee also once again requests the Government to specify the proportion of time spent by labour inspectors on administrative duties, in relation to the primary functions of labour inspection, and on any concrete steps taken to reduce the time spent on such tasks.

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

The Committee notes the observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Union and the Trade Union Federation for Professionals (VCP), received on 31 August 2017. ***The Committee requests the Government to provide its comments in this respect.***

Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts. In its previous comments, the Committee requested the Government to provide additional explanations with regard to the nature, scope and content of the Code for responsible market behaviour in the cleaning industry and its possible impact on the practical application of the Convention. The Government indicates that the pilot version of the Code from 2011 was applied only in the cleaning sector, but that the Code is now more widely applied beyond the cleaning industry, and is now also used for movers, as well as in the security and contract catering sectors. The Government also indicates that, by signing the Code, the parties (commissioning parties, contractors, trade unions and intermediaries) undertake to apply a set of principles regarding working conditions, including the correct payment of wages. The Government adds that the Code assists the parties to describe, accept and carry out assignments in a socially responsible manner, with respect for the quality of the services being provided. To monitor the implementation of the Code, each sector has a specific committee, composed of the social partners and contractors for each sector, which is authorized to examine complaints alleging inefficient or inadequate application of the Code. After hearing both parties, the committee decides whether a sanction should be imposed for non-compliance. In this respect, the Committee notes the observations of the workers' organizations, in which they point out that the Code is a private initiative which does not contain any legally binding provisions implementing the requirements of the Convention. The Committee notes that, in accordance with *Article 1(1)(c)*, the Convention applies not merely to a specific sector, but to all public contracts, whether for works (construction, alteration, repair or demolition of public works); goods (the manufacture, assembly, handling or shipment of materials, supplies or equipment); or services (the performance or supply of services). The Government reports that, to improve social conditions for workers, it has put in place a so-called "chain of liability for wages", which makes all legal entities in the chain (the main clients, contractors, subcontractors and employers) jointly responsible for payment of wages of the workers hired under the contract. If the workers do not get paid or are underpaid, they can hold each link in the chain liable for payment of their wages. The workers' organizations note in their observations that the "chain of liability" procedure is too unwieldy because each link has to be addressed separately and each claim must be fully examined before the employee can move up to the next link in the chain. The workers' organizations underline that this requirement makes the

process too long, especially for foreign workers that often leave the country before even the first link in the chain is fully addressed. In their observations, the workers' organizations once again express concern regarding the non-application of the Convention, indicating that the Public Procurement Act, which entered into force on 1 April 2013 and provides a general legal framework for public procurement regulations, implements the public procurement European Directives without ensuring the application of the Convention. In this regard, they note that section 2.115, paragraph 1, of the Public Procurement Act essentially reproduces section 26 of the Order of July 2005 on procedures for the award of public works, supply and service contracts implementing the EU Public Procurement Directive of 2004 and does not ensure the application of *Article 2* of the Convention. The workers' organizations point out that section 2.115, paragraph 1 of the Act is drafted as a purely permissive provision, as it authorizes the contracting authority to require the contractor to observe certain social, environmental and/or innovation criteria, but does not require the contracting authority to require the contractor to adhere to such criteria. As the Committee has noted in previous comments, the core requirement of the Convention concerns the inclusion of labour clauses of the type provided for in *Article 2*. **The Committee therefore requests the Government to provide information on progress made in ensuring effective application of the core requirements of the Convention. The Committee also requests the Government to provide updated information on the Code and its impact, and on the number and type of sanctions imposed by the sectoral committees in cases of non-compliance.**

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

Observation 2017

The Committee notes the observations received on 31 August 2017 from the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP), referring to issues under examination by the Committee as well as to alleged acts of intimidation against union members; alleged acts of anti-union discrimination against workers working through agencies, on zero-hour or short fixed-term contracts or as dependent self-employed; and the alleged undermining of the FNV's collective bargaining rights by allowing for collective agreements applicable to all workers to be concluded by less representative or yellow unions. **The Committee requests the Government to provide its comments in this respect.**

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination other than dismissal. The Committee previously requested the Government to provide details on the complaints and procedures on anti-union discrimination in recruitment as well as on the outcome of the proceedings. Furthermore, noting the lack of information concerning the protection against acts of anti-union discrimination during employment (other than dismissal), the Committee had repeatedly invited the Government to initiate discussions with the most representative employers' and workers' organizations with a view to broadening the protection against acts of anti-union discrimination of both trade union members and representatives. The Committee notes with **regret** that the Government confines itself to stating that it abides by the previously mentioned means of protection and that there are no new developments. The Committee also notes the FNV's indications that anti-union discrimination in recruitment is not separately monitored, and that the discussions with the social partners have not been initiated. **In order to enable it to assess whether adequate protection against acts of anti-union discrimination in recruitment is provided in practice, the Committee requests the Government to supply detailed information on the number of complaints of anti-union discrimination brought to the Recruitment Code Complaints Committee of the Dutch Association for Personnel Management and Organization Development (NVP), to the courts or to other competent authorities, the average duration of the relevant proceedings and their outcome, as well as the types of remedies and sanctions imposed in such cases. The Committee further requests the Government to engage in a national dialogue with the most representative employers' and workers' organizations with a view to ensuring a comprehensive protection of both trade union members and representatives against all acts of anti-union discrimination, including during employment (such as transfer, relocation, demotion or deprivation or restriction of remuneration, social benefits or vocational training).**

Article 4. Promotion of collective bargaining. The Committee had previously requested the Government to provide information on the outcome of the judicial process initiated by an FNV affiliate against the Government due to an opinion published by the Netherlands Competition Authority (NMA) discouraging collective bargaining on the terms and conditions of contract labour (that is work performed by individuals who do not necessarily work under the strict authority of the employer and who may have more than one workplace). The Committee notes that the European Court of Justice (ECJ), at the request of the Court of Appeal of The Hague, issued a preliminary ruling on 4 December 2014 in the proceedings *FNV Kunsten Informatie en Media (KIEM) v. the State of the Netherlands*. The ECJ generally ruled that, under European Union law, it is only when self-employed service providers who are members of one of the contracting employees' organizations and perform for an employer, under a works or service contract, the same activity as that employer's employed workers, are "false self employed" (in other words, service providers in a situation comparable to that of those employed workers), that a provision of a collective labour agreement, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) (prohibition of agreements restricting competition). The ECJ then ruled that it is for the national court to ascertain whether this is the case. The Committee notes that the Court of Appeal of The Hague subsequently issued a decision on 1 September 2015, pursuant to which competition law does not preclude a collective agreement from requiring an employer to apply the provisions of the collective agreement to self-employed substitutes (that is musicians substituting for members of an orchestra) as referred to in the specific case, and, in particular, to apply certain (minimum) rates.

The Committee notes that the Government states in this regard that: (i) competition law in the Netherlands provides for several exceptions to the cartel ban, one of which relates to collective labour agreements, provided that they are the result of negotiations between employers' and employees' organizations, and that they contribute directly to improving workers' employment and working conditions; and (ii) the ECJ has ruled that this exception also applies to collective agreements for "bogus self-employed persons" (service providers in similar positions to employees), since, according to the Court, they do not fall within the concept of "entrepreneurs" under European competition law, even if they are genuine self-employed under national law. The Committee observes that the Government concludes from the ECJ ruling that collective agreements for this group of "self-employed" persons can be made on their behalf. On the other hand, the Committee notes the Government's indication that this case has not yet led to amendments to legislation or regulations. Furthermore, the Committee notes from the FNV's observations that its affiliate FNV-KIEM obtained, in its proceedings against the Government, a favourable ruling from the ECJ with regard to the collective bargaining rights for self-employed workers, and that, in that specific case, the trade union has been granted the right to negotiate tariffs for a large part of this group, namely those self-employed workers that work side by side with regular employees. The Committee notes however that, according to the FNV, the Netherlands Authority for Consumers and Markets (ACM) (former NMA) still refuses to more broadly acknowledge the collective bargaining rights of self-employed workers that work side by side with regular employees, denying both those workers and the employees a fair income and allowing or even promoting underbidding, and that the Ministry of Social Affairs follows the ACM without giving consideration to the effects of the ruling on collective bargaining rights.

The Committee recalls that *Article 4* establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties with respect to all workers and employers covered by the Convention. As regards the self-employed, the Committee recalls, in its 2012 General Survey on the fundamental Conventions, paragraph 209, that the right to collective bargaining should also cover organizations representing self-employed workers. The Committee is nevertheless aware that the mechanisms for collective bargaining applied in traditional workplace relationships may not be adapted to the specific circumstances and conditions in which the self-employed work. **The Committee invites the Government to hold consultations with all the parties concerned with the aim of ensuring that all workers including self-employed workers may engage in free and voluntary collective bargaining.**

Considering that such consultations will allow the Government and the social partners concerned to identify the appropriate adjustments to be introduced to the collective bargaining mechanisms so as to facilitate their application to self-employed workers, the Committee requests the Government to provide information on the progress achieved in this respect.

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

Observation 2017

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

Article 2 of the Convention. Measures to address differences in remuneration of part-time workers. In its previous comments, the Committee requested the Government to provide details on the advice given by Social and Economic Council (SER) on labour market discrimination, including on how the advice addressed the recommendations made by the Task Force Part-Time Plus in 2010 to tackle differences in pay between men and women. The Committee recalls that the Task Force Part-Time Plus was established to address equal pay in a wider national context in which men are usually working full time and women part time. The Committee notes that the most recent study on equal pay published by the Central Bureau of Statistics (CBS) in November 2016 and referred to by the Government in its report, indicates that average hourly wages of part-time workers are relatively low compared to those of full-time workers, and a significant gender pay gap persists between full-time and part-time workers. The study found that in 2014, 32 per cent of the male workers and 79 per cent of the female workers were working part-time in the private sector, compared to 24 per cent of the male workers and 70 per cent of the female workers in the public sector. Part-time work is also more common in female dominated sectors, and the study indicates that of the five sectors with the highest number of part-time workers, restaurant and hotel and commerce sectors – where many women work – are those with the lowest hourly wages. While welcoming the research undertaken on equal pay differences and part-time work, the Committee notes that the Government's report does not contain information on specific measures taken to address differences in remuneration, including on any follow-up given to the recommendations of the Task Force Part-Time Plus. The Committee further notes that FNV and CNV point out that the unjustified difference in pay with respect to part-time work also exists with respect to other types of non-standard forms of employment, including fixed-term work, zero or undefined hours contracts, and self-employed workers undertaking regular work, and encourage the Government to broaden the study on the gender pay gap to other non-standard forms of work contracts and to examine the low number of legal proceedings initiated in this regard. With regard to the promotion of part-time work as a means to assist workers in reconciling work with family responsibilities, and to promote full-time employment of working parents, especially women, the Committee refers to its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156). **Noting that the action taken and the follow-up given to the recommendations to reduce the gender pay gap with respect to part-time workers remain unclear, the Committee asks the Government to adopt more targeted measures to reduce the pay gap between men and women, taking into account the high number of women engaged in part-time work and their concentration in jobs that are generally lower paid, and to report in detail on the results achieved. Further, the Committee asks the Government to consider broadening the study on the gender pay gap to other non-standard forms of work contracts and to examine any obstacles that may exist for workers employed in non-standard forms of employment to initiate legal proceedings concerning pay inequalities between men and women, and to provide information on the steps taken in this regard.**

Measures to address the gender pay gap. The Committee previously requested information on any proactive measures taken including any follow-up given to recommendations with respect to an equal pay campaign, the enforcement of equal pay provisions by the labour inspectorate and the development of an equal pay policy when providing government support to financial institutions, as the gender pay gap in this sector was significant. The Committee notes from the CBS study on equal pay that the uncorrected gender pay gap – based on gross hourly wages – in the public sector narrowed from 13 per cent in 2010 to 10 per cent in 2014. In the private sector the gender pay gap however remained at 20 per cent. After correction (taking into account differences in part-time and full-time work, age, level of occupation and management posts) a difference remained of 5 per cent in the public sector and 7 per cent in the private sector in 2014. The study also indicates that the gender pay gap increases with age and that, in female dominated enterprises in the private sector, average hourly wages are lower. Female managers in the private sector also earn significantly less than male managers and persisting occupational segregation negatively impacts women's wages in the health sector where the gender pay gap is the highest. In terms of measures to address the gender pay gap, the Government reports that the SER advice "Discrimination doesn't work!" issued in April 2014, emphasized the collective responsibility of government, trade unions and employers' organizations and other social actors to address discrimination in the labour market, and that in response, the Government presented the Action Plan on Labour Market Discrimination (May 2014) – which was updated in 2016. The Government reports that measures under the Plan have included: (i) the launching by the Labour Foundation of the Diversity Charter for employers in July 2015; (ii) the creation of a specific discrimination team within the labour inspectorate; and (iii) additional research on equal pay. The Committee notes the new periodic study on equal pay in the public and private sectors published by the CBS (November 2016) and the research undertaken in 2016 by the Netherlands Institute for Human Rights (the Institute) on equal remuneration between men and women in higher education institutions. While welcoming these initiatives, the Committee observes that, apart from the additional research on equal pay, the information provided by the Government is insufficient to assess the effectiveness of any of the proposed solutions for reducing the gender pay gap, including any follow-up given to the abovementioned recommendations. The Committee notes that FNV and CNV urge the Government to monitor at regular intervals the effectiveness of the measures concerning the gender pay gap and to hold consultations with the social partners on how to improve effectiveness. **Noting that the uncorrected gender pay gap remains significant and that no further information has been provided by the Government on additional measures taken to address, in cooperation with the social partners, that part of the difference in remuneration that may be due to discrimination, the Committee urges the Government to provide such information in its next report. The Committee asks the Government to take measures, in cooperation with the social partners, to address the effects of occupational segregation in certain sectors of employment on the differences in pay between men and women, in particular in the health sector, and to adopt specific measures to address the gender pay gap in female-dominated enterprises in the private sector and at higher management level. The Committee encourages the Government to monitor, in consultation with the social partners, the effectiveness of the measures concerning the gender pay gap, and to provide information on the results achieved in this regard.**

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

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

Observation 2017

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

Articles 2 and 3 of the Convention. National equality policy. The Committee notes the Action Plan on Labour Market Discrimination in 2014, which was adopted following the advice provided by the Social and Economic Council "Discrimination doesn't work!" (published in 2014). The Plan, which was updated in 2016, emphasizes the collective responsibility of government, workers' and employers' organizations, and other social actors, in addressing labour market

discrimination. It includes generic measures to combat discrimination in five tracks (enforcement; reporting; knowledge and awareness; diversity policy; and research), and additional measures targeting specific groups. The Committee notes the information provided by the Government on various measures taken to implement the Action Plan on Labour Market Discrimination, including: the Diversity Charter launched by the Labour Foundation in July 2015 to support employers and workers in the public and private sectors, and signed by more than 65 public and private companies; the labour anti-discrimination campaign in 2016 which focused on selection and recruitment, and which included a toolkit for employers; a Guide to improve public willingness to report on discrimination; the anti-discrimination team within the labour inspectorate; and a model agreement for hiring flexible labour, which includes a termination clause where a company receives a criminal conviction for employment-related discrimination. The Committee notes that while acknowledging that the Government has worked closely with the social partners to develop and support programmes to tackle discrimination in the labour market, the FNV and the CNV emphasize the need to demonstrate that the measures adopted meet their objective. **Noting that progress reports on the implementation of the Action Plan on Labour Discrimination are being presented to Parliament at regular intervals, the Committee trusts that such reporting includes an evaluation as to whether the measures taken have produced effective results in achieving both formal and substantive equality in employment and occupation and in eliminating discrimination on the grounds listed in the Convention, and asks the Government to provide information in this regard.**

Equality of opportunity and treatment of ethnic minorities in employment and occupation. The Committee recalls its previous comments in which it noted the high unemployment rates among “non-Western” persons with a migration background (persons of whom both parents were born outside the Netherlands) and the need to address discrimination against certain ethnic groups, particularly those of Moroccan and Turkish origin, with respect to access to the labour market. Measures were needed to address the unexplained difference in the unemployment rates between non-Western minorities and native Dutch, to set specific targets in the context of specific programmes aimed at eliminating discrimination on the basis of race, colour and national extraction, and to assess the effectiveness of these programmes. The Committee notes from the Annual Report on Integration 2016 (Statistics Netherlands) that one in three employed persons with a non-Western background work under flexible contracts compared to one in five native Dutch workers. While the unemployment rate among non-Western persons with a migration background, especially among Turkish and Moroccan women, declined in 2016 to 13.2 per cent (down from 16.5 per cent in 2014), it is higher among second generation migrants. Youth unemployment among persons with a non-Western background is particularly high (22 per cent compared to 9 per cent for native Dutch youngsters). Among the more highly educated with a non-Western background, unemployment rates are two or three times higher than educated native Dutch people. The Government has further provided data showing that non-Western persons with a migration background represented only 5 per cent of the employees in the public sector in 2015 (as compared to 8.5 per cent Western persons with a migration background and 86.5 per cent native Dutch). The Committee notes the observations by FNV and CNV that young persons of non-Dutch background, in particular of Moroccan, Turkish and Caribbean origin, still have difficulties in entering the labour market, and that discrimination in recruitment against people with a non-Dutch sounding last name continues to be a concern. In this regard, the Committee notes from the Government’s report and information published by the Netherlands Institute for Human Rights (the Institute, hereafter) the relatively high number of cases received by equality and human rights bodies concerned with discrimination based on race (which includes colour, and national and ethnic origin). In 2015, 43 per cent of the complaints received by the Anti-Discrimination Services (ADVs) concerned racial discrimination, and decisions by the Institute relating to such discrimination increased from 10 per cent in 2014 to 23 per cent in 2016.

With regard to specific measures taken to address discrimination against persons with a non-Western background, the Government indicates that the Action Plan on Labour Discrimination contains various measures that focus on specific groups, including non-Western migrants. Generic measures include the launching of the Diversity Charter, the anti-discrimination campaign and the improvement of reporting and registration of incidences of discrimination to the (ADVs) and the Institute. In addition, the “Inclusive Government” Programme aims to promote inclusive organizations particularly in the areas of youth, employment, education, health care, welfare and the judiciary. The Government further reports that addressing discrimination is an integral part of the strategy on youth unemployment that has a specific focus on persons with low qualifications or with a non-Western background. Policies will concentrate on career orientation, cooperation and the active involvement of employers, and 75 employers have signed a “work agreement” to this end. Regarding diversity policies in the public sector, the Government refers to the relevance of the “Inclusive Government” programme, the Diversity Charter, and research on, and the sharing of, good practices on cultural diversity. While welcoming the ongoing efforts taken by the Government to address discrimination in the labour market, the Committee notes the observations by FNV and CNV that the impact of the measures adopted remains unclear and that the Government should monitor whether targets are reached in practice. While welcoming the information provided by the Government on the measures adopted in the context of a generic approach towards discrimination, the Committee notes the scant information in the Government’s report on any specific measures taken to address discrimination on the basis of race, colour and national extraction against non-Western minorities, or on whether measures to promote their equality of opportunity and treatment in the labour market in practice have reached the expected results. **In these circumstances and noting the rise in cases of racial discrimination reported to the Institute and the ADVs and the observations communicated by the FNV and the CNV, the Committee asks the Government to evaluate the effectiveness of the programmes to eliminate discrimination and promote equal opportunity in training, skill development and employment of ethnic minorities, in particular of non-Western persons with a migration background, and to provide detailed information in this regard. The Committee also asks the Government to continue to assess the root causes of systemic and structural discrimination against minority groups, and to report on the measures taken and the results achieved to address the unexplained difference in employment between native Dutch and non-Western minorities, in particular men and women of Moroccan and Turkish origin.**

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

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

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the joint observations made by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP) on Conventions Nos 81 and 129, received on 31 August 2017, reiterating that no noticeable improvements in the application of the Conventions have occurred following the recommendations in the report of the tripartite committee adopted by the Governing Body at its 322nd Session (November 2014) concerning the representation made under article 24 of the ILO Constitution relating to Conventions Nos 81 and 129 and the Occupational Safety and Health Convention, 1981 (No. 155). In this respect, the Committee notes that the trade unions emphasize that they appreciate the exchange and work with the labour inspectorate, but that the Government does not provide sufficient means to the labour inspectorate.

Articles 3, 10 and 16 of Convention No. 81 and Articles 6, 14 and 21 of Convention No. 129. Number of labour inspectors and the frequency of labour inspections to ensure the effective discharge of inspection duties. Workload of labour inspectors. Time spent on administrative tasks. The Committee recalls that the tripartite committee in its report requested the Government to ensure that the number and frequency of labour inspections is sufficient to ensure the effective discharge of inspection duties and compliance with the respective legal provisions in all workplaces, particularly in enterprises that are not considered to be in high-risk sectors, and in small enterprises. The tripartite committee also encouraged the Government to ensure that administrative tasks entrusted to labour inspectors do not affect the effective discharge of their primary duties, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129.

The Committee notes the observations made by the FNV, the CNV and the VCP that only 3.5 per cent of companies in high-risk sectors are inspected (where vulnerable categories like migrant workers are overrepresented), that the labour inspectorate is extremely understaffed and would require at least an additional 100 full-time labour inspectors as a result of having to deal with an extreme workload (due to an increase in the number of occupational accidents, the increasing scope of inspections and the increasing complexity of labour market fraud). The organizations indicate that if the capacity of the labour inspectorate is not substantially increased, there is a significant risk that workers will be exploited.

The Committee notes the information provided in the Government's report that the number of labour inspections has continued to decrease to 21,138 in 2015 and 18,910 in 2016 (continuing the decreasing trend previously noted, from 39,610 inspections in 2005 to 22,641 in 2014). In this regard, the Committee also notes the Government's indication that, since 2015, an increased focus has been placed on the social impact of labour inspection activities, with the number of inspections remaining important, but no longer being an objective in itself. The Committee also notes that the Government confirms the reiterated observations made by the FNV, the CNV and the VCP relating to an increased workload as a result of the need of labour inspectors to deal with an increasing number of legal objections and appeals from employers against the decisions and actions of the labour inspectorate. In this respect, the Committee notes the Government's reiterated indication that the inspectorate intends to reduce the time spent on administrative tasks as much as possible and that inspectors are encouraged to address inefficient work processes and administrative loads and make proposals for the improvement of the inspectorate's management.

The Committee finally notes the Government's indication that the capacity of the labour inspectorate was subject to an independent assessment carried out at the request of Parliament in 2016. The Government states that the assessment found that annual plans and multi-annual plans of the inspectorate were well developed and based on sound risk evaluations. The assessment noted that determining whether the inspectorate had sufficient capacity required further information and depended on more explicit goal setting. **The Committee once again requests the Government to ensure a sufficient number of labour inspectors and labour inspections to achieve adequate coverage of workplaces liable to inspection for the effective discharge of inspection duties. In this respect, the Committee requests the Government to provide information on any follow-up measures taken following the assessment of the capacity of the labour inspectorate in 2016, as well as any measures taken or contemplated to facilitate labour inspectors' capacity to fulfil their duties in light of the increasing number of legal objections and appeals from employers.**

Noting the Government's indication that it focuses on the social impact of labour inspection activities, the Committee requests the Government to provide information on the meaning of the term "social impact" in this context as well as on how such impact is measured, and requests it to continue to provide labour inspection statistics (including on the number of labour inspectors, the number of workplaces liable to inspection and the workers employed therein, the number of labour inspections, the number of violations detected and the penalties imposed, as well as the number of industrial accidents and cases of occupational disease). The Committee also once again requests the Government to specify the proportion of time spent by labour inspectors on administrative duties, in relation to the primary functions of labour inspection, and on any concrete steps taken to reduce the time spent on such tasks.

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

Observation 2017

The Committee notes the observations by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2016.

Article 4 of the Convention. Leave entitlements for men and women workers with family responsibilities. The Committee recalls its previous comments in which it noted the need to promote a more equitable sharing of family responsibilities between men and women, especially in a national context where two-thirds of women work part time. The Committee notes that, in its report, the Government indicates that leave arrangements aim to facilitate a better combination of work and care tasks, and that flexible arrangements and part-time contracts make it possible to combine work and care and other responsibilities. The Committee notes that the Act of 17 December 2014 amending the Work and Care Act and the Act on Working Hours entered into force on 1 January 2015, and that the amendments introduce, among other things, a transferable maternity leave for the partner when the mother dies during childbirth (or shortly after) (section 3:1a(1)). Women have also been granted the possibility to take up the last weeks of maternity leave (from the seventh week after birth) part time and to spread it over a longer period (section 3:1(6)). The Government also reports that the father or the partner has been granted an extended right to take three days' unpaid leave after the birth of the child, which the employer cannot refuse, and that the statutory right to paternity leave will be further extended from two to five days' paid leave. Regarding parental leave (full time or part-time – 26 weeks for each child under 8 years of age), the Government indicates that the requirement to be employed for at least a year has been deleted. Regarding short-term leave in case of emergencies and special personal circumstances, paid leave will also be possible for medical reasons (visit to a doctor or hospital or accompanying others) (section 4:1(2)(c)). Long-term leave has been expanded to cover not only care for the terminally ill but also for the ill in need of care (section 5:9), and the ten days short-term leave has been expanded to cover also care for second-degree family members and social relations (section 5:1 (2)). Regarding the take-up of leave entitlements, the Committee notes from the statistics provided by the Government that in 2013, 38,000 women and 27,000 men took short-term leave (compared to 36,000 women and 35,000 men in 2009); further, 3,000 men and 5,000 women took long-term care leave. Furthermore, parental leave was still taken up substantially more by women than by men employees (71,000 women employees and 29,000 men employees) although the overall take up has been steadily increasing since 2009 (41,000 women and 19,000 men employees).

The Committee notes that FNV and CNV express concern at the lack of paid care leave and severe budget cuts, including the fact that the Act on tax reduction for parental leave has been abolished. According to FNV and CNV, the high percentage of women in part-time jobs is related to relative expensive childcare and the lack of paid parental and paternity leave. Therefore long-term leave and parental leave should be paid leave, and paid leave for fathers after childbirth should be increased to ten days. Regarding care for other members of the family, FNV and CNV maintain that unpaid long-term care leave is not a solution for every worker with long-term care responsibilities. Referring to the amendments of the Social Support Act and the Long-Term Care Act, which entered into force on 1 January 2015, they indicate that these were accompanied with severe budget cuts in social support and long-term care for elderly people and people with disabilities. The Committee notes that in October 2016, the Social Economic Council (SER) published the advice "A working combination" in which it makes proposals to (i) organize time better; (ii) create effective day-care arrangements for school-age children; (iii) optimize leave take up in the first year after the birth of a child; (iv) improve the combination of work and care for persons in need; (v) improve lifelong learning; and (vi) develop a market for personal services. **Recalling the importance of equitable sharing of family responsibilities between men and women, the Committee asks the Government to adopt effective measures to encourage the take up of leave arrangements by both men and women workers with family responsibilities, and provide information in this regard as well as on any follow-up given to the recommendations by the SER to optimize leave take up, especially among fathers. In view of the repeated observations by the trade unions that in order to meet the needs of the employees, long-term leave and paternal leave should be paid leave, the Committee asks the Government to hold consultations with the social partners with a view to ensuring that leave entitlements are effective in enabling men and women to undertake without discrimination their family responsibilities, for example through granting paid long-term care leave and additional paid leave for fathers after childbirth (ten days), and to report on the progress made. Further, the Committee asks the Government to continue to provide information, disaggregated by sex, on the number of employees exercising their right to the various leave entitlements under the Work and Care Act.**

Netherlands

Article 5. Childcare and family services and facilities. The Committee recalls the importance of ensuring that family services and facilities meet workers' needs and preferences. It also recalls that in its previous comments it had noted that the use of informal childcare had decreased but that efforts were needed to improve the affordability and quality of childcare services. The Committee notes the statistics provided by the Government in its report on the average number of children from single parent families and two-parent families, using the different type of childcare facilities in 2015 (day-care centres for children under the age of 4; after-school care for school-aged children; and childminders). The data show that day-care centres and out-of-school care are the facilities most used. The Government also reports that at the end of 2015, there were 427,000 households that received a federal childcare subsidy. Regarding the quality of childcare, the Government indicates that the Ministry of Social Affairs and Employment sets quality standards for childcare services and the public health service monitors the safety of childcare and compliance with standards. In its report on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Government also states that it is making efforts to improve the quality of childcare through stimulating parental involvement, raising stability and improving staff quality. To improve accessibility and affordability, fiscal incentives included an increase in the childcare allowance for families in which both parents work and make use of formal childcare (the employed person tax credit), and the extension to six months of the eligibility for childcare allowance during unemployment in 2016. In addition, the "income-based combination deduction" specifically aims at encouraging the secondary earner in the family, in practice mostly women, with children under 12 years of age to work and work more hours. The Committee notes that FNV and CNV observe that after the initial investments to make childcare more affordable, childcare has become more expensive for middle-income working families following severe budget cuts due to the financial crisis. This resulted in an increase of informal childcare arrangements. The FNV and CNV further indicate that in January 2016, the Social Economic Council (SER) recommended that stricter criteria for assessing training and education of care workers be established, care work be further professionalized and administrative procedures for care workers be decreased. The SER also advised that the reasons for the decreased use of formal childcare services be investigated, along with how accessibility, especially for lower income groups, could be improved. The FNV and CNV further state that the Netherlands Bureau of Economic Policy Analysis found that the supplement for childcare – which would increase in 2017 – would mainly benefit high-income groups already working many hours. ***The Committee asks the Government to continue to provide statistical information, disaggregated by sex, on the availability of affordable and accessible childcare services and facilities including their utilization, that would allow the Committee to assess the progress made since 2015. It also asks the Government to indicate any follow-up to the SER advice to professionalize care work and improve the education and training of care workers, with a view to improving the quality of care. The Committee further encourages the Government to undertake studies or surveys assessing whether the Childcare Act in fact responds to the specific needs and preferences of workers with family responsibilities in both low- and middle-income groups for childcare services and facilities, and to report on the progress made in this regard. The Committee also requests the Government to provide information on the number and nature of services and facilities that exist to assist workers with family responsibilities regarding other dependent members of their family.***

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

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**Observation 2017**

The Committee notes the observations of the Norwegian Confederation of Trade Unions (LO), received together with the Government's report. **The Government is requested to provide its comments in this respect.**

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee refers to its previous comments, in which it requested the Government to keep the Office informed of any new developments in the procedure initiated by the Surveillance Authority of the European Free Trade Association (EFTA) against Norway with regard to Regulation No. 112/2008 of 8 February 2008, as amended, and to provide information on the manner in which the Regulation gives effect to the Convention. The Committee notes the Government's indication that the EFTA Surveillance Authority decided to close the case in December 2012, stating that "taking into consideration the development of this case since its opening in June 2008, in particular the amendments adopted to Regulation No. 112/2008, together with the increase in the number of universally applicable agreements, the scope of the infringement has been significantly reduced. The Authority considers it therefore appropriate, at the present stage, not to proceed further with this case. This decision is, however, without prejudice to any future decision by the Authority to open a new case on this issue or on a related issue. Such a decision could be taken, for example, in the light of new information concerning the implementation, interpretation or application of the national measures under consideration, receipt of a new complaint, or developments in EEA or EU law." The Government indicates that, while there have been no amendments in the Regulation itself during the reporting period, due to the revision of the public procurement legislation to implement EU Directive 2014/23 of 26 February 2014 on the award of concession contracts, the Regulation's scope of application has been extended to cover such contracts as of 1 January 2017. Moreover, the Government adopted new legislation which as of 1 January 2014 gives the Labour Inspection Authority competence to supervise and enforce the contracting authority's compliance with the Regulation. The Government adds that a recent evaluation of the Regulation showed that, while most contracting authorities include labour clauses in their contracts, many, particularly smaller municipalities, fail to follow up on compliance with the clauses once they have been inserted into the contracts. In its observations, the LO expresses concern that the threshold for application of the Regulation is very high, and urges application of the Convention to public procurement contracts under this threshold, and that it be applied in all sectors to prevent social dumping. The LO also states that the Government has not increased the Labour Inspection Authority resources and asks that it do so to strengthen compliance. **The Committee requests the Government to provide updated detailed information on the manner in which Regulation No. 112/2008 is applied in practice, and to communicate a summary of the evaluation concerning the Regulation.**

C137 - Dock Work Convention, 1973 (No. 137)**Observation 2017**

The Committee notes the observations of the Confederation of Norwegian Enterprises (NHO) and the Norwegian Confederation of Trade Unions (LO), communicated with the Government's report.

Article 3 of the Convention. Registered dockworkers. In its 2015 comments, the Committee took note of the Government's indication that there were several cases pending in Norwegian courts on various aspects of the collective agreements through which the Convention is implemented in the country, whose outcome might affect the manner in which the number of dockworkers is determined. The Government added that, once the pending cases were resolved, it might then be appropriate to engage in a dialogue with the social partners with the intent of finding a method of determining the number of dockworkers that would be acceptable to both parties, and would enable the Government to provide the Committee with comprehensive information on the implementation of the Convention. The Committee therefore requested the Government to provide copies of relevant court decisions and information on the manner in which the Convention is applied. The Government recalls in its report that the Convention's requirements are implemented through collective agreements between the NHO and the LO. It adds that the Supreme Court of Norway took under consideration a case involving one such collective agreement. The Committee notes the Supreme Court's decision of 16 December 2016 in Case No. HR-2016-2554-P, *Holship Norge AS v. Norwegian Transport Workers' Union (NTF)*, a copy of which was communicated with the Government's report. The Committee notes that the LO intervened in the appeal as a third-party intervener for the benefit of the NTF, and the NHO and the Norwegian Business Association intervened as third-party interveners on behalf of the appellant, Holship. The Supreme Court examined the issue of the lawfulness of a notified boycott against Holship, a Danish enterprise, by the NTF, to prevent Holship employees from loading and unloading ships landing at the Port of Drammen. The boycott was intended to force Holship to enter into a collective agreement with the NTF (the Framework Agreement) containing a priority of engagement clause, which would reserve loading and unloading work for dockworkers associated with the Administration Office of the Port of Drammen. According to the Framework Agreement, administration office stevedores handle loading and unloading operations for all port users in the Port of Drammen. The Administration Office has six permanent stevedores, however, additional personnel may be hired when needed, and there are between 50 and 90 additional workers associated with the Administration Office. The Supreme Court concluded that the dockworkers' priority of engagement constitutes an unlawful restriction on Holship's freedom of establishment under Article 31 of the Agreement on the European Economic Area (the EEA Agreement). The Supreme Court observed that the principle of priority of engagement was originally established to improve the situation of dockworkers, and the priority of engagement clause is anchored in *Article 3* of Convention No. 137. The Court also referred to *Article 2* of the Convention, observing that the purpose of the Convention seemed to be establishing orderly working and payment conditions for dockworkers. In reaching its conclusions, the Court held that these considerations could be fulfilled by means other than granting priority of engagement for loading and unloading work to one group of workers. In its observations, the LO indicates that the Norwegian courts have handed down several judgments ruling on the validity of the priority of engagement clause reserving loading and unloading for registered dockworkers in private docks and dock facilities. As a consequence, the priority of engagement clause is not being applied in some ports where it was previously applied. The loading and unloading in these ports has been taken over by employees of the enterprises located in these ports, by workers these enterprises employ temporarily, and by the ships' crew, at the expense of registered dockworkers. The LO is of the view that the practice in these ports is incompatible with Norway's obligations under the Convention. In its observations, the NHO indicates that there have been questions raised about who is responsible for the implementation of the Convention in Norway, affirming that this is the sole responsibility of the Norwegian State. The NHO further indicates that the Convention is not incorporated by law or regulation in Norway. Referring to its May 2014 observations, the NHO reiterates that the Norwegian understanding of dock work has been incorrectly restricted to loading and unloading operations and considers that measures should be taken to ensure that the Convention is given proper coverage in Norway. The Government points out that the parties to the case are engaged in dialogue following the Court's decision, considering the need for changes to the way dock work is organized and possible changes to the collective agreements. The Government is awaiting the result of these negotiations. **The Committee requests the Government to provide more detailed information on the issues raised by the social partners, as well as on the outcome of the dialogue process, including any changes to the manner in which dock work is organized in the country.**

Application of the Convention in practice. **The Committee requests the Government to provide a general appreciation in its next report on the manner in which the Convention is applied in the country, including for instance extracts from reports, particulars of the numbers of dockworkers and of variations in their numbers over time.**

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)***Observation 2017***

Article 1 of the Convention. Scope of application. The Committee notes with **interest** the amendment to the first paragraph of section 12-10 of the Working Environment Act (WEA) extending the personal scope of the provision concerning the right to care for family members in the terminal stage of an illness from “close relatives” to a “person being close to the patient”. This means that the personal scope now also includes friends, neighbours or other persons in the local community with whom the patient has a close relationship and from whom they feel comfortable receiving care. The Committee notes that the 60 days of care benefit is per patient and may be used flexibly including being shared by several caregivers. The Committee also notes, in the second paragraph, the inclusion of the right to leave up to ten days per year for a worker to provide “necessary care” to their parents, spouse, live-in or registered partner and that the types of care that qualify as “necessary” is an assessment to be made in each specific case. The “necessary care” leave does not entitle the worker to a care benefit to compensate for a loss of income. ***The Committee asks the Government to continue to provide information on the practical application of section 12 of the WEA, including relevant statistical information and any assessments undertaken to evaluate the effectiveness of the WEA in promoting the balancing of work and family responsibilities for men and women without discrimination.***

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

C029 - Forced Labour Convention, 1930 (No. 29)*Observation 2017*

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the detailed discussion which took place in the Conference Committee on the Application of Standards in June 2017 concerning the application by Poland of the Convention.

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 previously noted the observations of the Independent and Self-Governing Trade Union ("Solidarnosc") that there had been exploitation of citizens of the Democratic People's Republic of Korea (DPRK) for forced labour in Poland. In 2011, there were 239 DPRK workers brought legally to Poland, while the number in 2012 rose to 509. Reportedly they had to send back to the regime a large part of their legitimate earnings. Solidarnosc expressed its concern at the working conditions of those workers, which might be assimilated to forced labour. The Committee also noted the Government's statement that, in 2016, comprehensive controls in selected entities known to employ DPRK citizens were carried out throughout the country. 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 particular, there were no instances of failure to pay or payment of a lower amount than that stated in the foreigners' work permits, based on the evidence of payments presented by the employers, such as bank transfers and payrolls with signatures of DPRK citizens.

The Committee also noted that, according to the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK, nationals of the DPRK are being sent abroad by their Government to work under conditions that reportedly amount to forced labour. Some 50,000 DPRK workers operate in countries such as Poland and mainly in the mining, logging, textile and construction industries. As examples of working conditions, the workers do not know the details of their employment contract and 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 and given insufficient daily food rations. They are under constant surveillance by security personnel and their freedom of movement is unduly restricted. Workers' passports are also confiscated by the same security agents.

The Committee notes that, in its conclusion adopted in June 2017, the Conference Committee called upon the Government to increase its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to forced labour; to provide information on the measures taken to identify cases of forced labour to the Committee of Experts, paying particular attention to the situation of workers from the DPRK; to take immediate and efficient measures so that the perpetrators of such practices, if they occur, are prosecuted and that dissuasive penalties are issued; and to ensure that identified victims of forced labour have access to adequate protection and remedies.

The Committee notes the IOE's statement that it is essential to assess fully and objectively whether the living and working conditions of these workers are in accordance with fundamental labour standards. If forced labour practices are detected, the victims should be identified and protected. Moreover, beneficiaries of such illegal practices should be identified and following a fair trial, punishments should be imposed that are commensurate with the gravity of the offences.

The Committee notes the Government's information in its report that the Polish authorities, including the Embassy of Poland in Pyongyang, are not involved in employing citizens from DPRK or carry out any promotional activities in this regard. Their employment takes place only as an activity of individual entities. Foreign employees, including those from the DPRK, are subject to the same labour law as Polish citizens in principle. The Government indicates that, in 2016 and 2017, no new visa has been issued to DPRK citizens. As of 1 January 2017, there were 400 citizens from DPRK in Poland with valid residence permits, including 368 with temporary residence permits and 31 with long-term European Union (EU) residence permits, while not all of them are employed. In response to the signals revealed in 2016, the National Labour Inspectorate and the Border Guards carried out monitoring activities covering all entities employing the citizens of the DPRK, and no infringements seemed to relate to forced labour. However, the Government indicates that, the lack of cooperation between potentially affected people and monitoring authorities can be observed, which may hamper the objective assessment.

The Committee also notes the Government's information that a number of violations of provisions of the Act on the Promotion of Employment, as well as regulations in the scope of Labour Law were identified. Among the examples of inspections concerning citizens of DPRK, the Committee notes that, 51 persons were found carrying out paid work on a construction site in Warsaw. They were employed by a DPRK company under employment contracts governed by the DPRK law and delegated to work in Poland, and their salaries were paid to their wives in DPRK. On another construction site, 60 workers were found delegated to work there by the same DPRK company. Although no failure to ensure the minimum employment standards in Poland was detected, it was found that the passports of all the workers from DPRK were kept by a representative of that company. They also gave their residence cards to the representative of the company after the completion of the inspection. Moreover, a representative was always present during the inspection as an interpreter. The Committee observes that, the abovementioned practices, such as the indirect payment of wages and confiscation of identification papers, could significantly increase the dependency of workers concerned on the controlling DPRK entity, which in turn contributes to their vulnerability. The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant works does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non-payment or indirect payment of wages, and deprivation of liberty. Such practices might cause their employment to be transformed into situations that amount to forced labour. ***The Committee therefore requests the Government to strengthen its efforts to ensure that migrant workers, especially those from the DPRK, are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee also requests the Government to take the necessary measures to enable migrant workers to approach the competent authorities and seek redress in the event of a violation of their rights or abuses, without fear of retaliation. It further requests the Government to provide statistical information on the number of violations of the working conditions of migrant workers that have been recently detected and registered by the labour inspectors, and to indicate the penalties applied for such violations.***

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

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*Observation 2017*

Articles 2 and 5(1) of the Convention. Effective tripartite consultations. The Committee notes the adoption on 24 July 2015 of the Act on the Social Dialogue Council and other social dialogue institutions (SDC Act), which entered into force on 11 September 2015. The Government indicates that the Social Dialogue Council (SDC) established under the SDC Act is the forum for tripartite dialogue and cooperation between the tripartite partners which replaced the Tripartite Commission for Social and Economic Affairs. At its first meeting in December 2015, the SDC established eight task teams, including the tripartite Team for International Affairs (SDC-TIA), which is mandated to carry out consultations on the matters covered under the Convention. The Government indicates that the consultations on matters referred to in *Article 5(1)(a), (b) and (d)* of the Convention were held through an exchange of correspondence between representative employers' and workers' organizations. It adds that, following observations made by the employers of Poland in 2014, draft replies to questionnaires and draft

reports are now being submitted to members of the SDC–TIA and to the members of the Presidium of the SDC. The Ministry of Family, Labour and Social Affairs submits documents for consultation to the social partners 30 days in advance. During the reporting period, written consultations were conducted with the social partners to examine the possible ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, and the 2014 amendments to the Maritime Labour Convention, 2006, as amended (MLC, 2006). The Committee notes with *interest* that the ratification of the 2014 Protocol was registered on 10 March 2017. With respect to issues arising out of reports to be made under article 22 of the ILO Constitution, the Government indicates that the draft act amending the Act on trade unions and certain other acts extending the right of association pursuant to Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was submitted to the SDC to obtain the views of the social partners. ***The Committee requests the Government to continue to provide information on the content, frequency and outcome of the consultations held on the matters concerning international labour standards covered under Article 5(1)(a)–(e) of the Convention.***

Article 1. Representative organizations. In its previous comments, the Committee noted the concerns of the employers of Poland with respect to the determination of the most representative organizations for purposes of the Convention. The Committee requested the Government to provide information on any developments in this regard. The Government indicates in its report that the question of representativeness is addressed in the SDC Act. SDC worker representatives are chosen from representative trade union organizations, national trade unions, federations and confederations pursuant to criteria established under section 23 of the SDC Act. Employers are represented by members of representative employers' organizations and recognized national inter-trade employers' organizations that operate on the basis of the Act on employers' organizations of 23 May 1991 or the Act on crafts of 22 March 1989, pursuant to the criteria established under section 24 of the SDC Act. The Government adds that requests of employers' and workers' organizations to determine their representativeness are required to be submitted every four years and are examined by the Warsaw Regional Court. In this context, an employers' or workers' organization can lose their representative status if they fail to submit a request for repeated determination of representativeness within this timeline. The Government further indicates that the SDC Act was adopted following consultations with employers' and workers' organizations. Pursuant to section 87 of the SDC Act, the SDC must evaluate the functioning of the provisions of the Act and submit recommendations and changes for increasing the organizational autonomy of the Council to the President of the Republic of Poland within 24 months of the date of entry into force of the Act. ***The Committee requests the Government to provide an evaluation of the effectiveness and impact of the Act on the Social Dialogue Council with respect to the matters covered by the Convention.***

Article 4(2). Training. The Government indicates that the issue of training has not yet been addressed by the SDC. It adds, however, that the social partners may benefit from the training funds available under the Operational Programme Knowledge Education Development 2014–20 (POWER). The Government considers that it is crucial to strengthen the capacities of the social partners, particularly at the local and regional levels. ***The Committee requests the Government to continue to provide information on any arrangements made to provide training to the participants in the consultative procedures covered by the Convention.***

Article 6. Annual report. The Government indicates that, pursuant to section 32(3) of the SDC Act, the President of the Council is required to submit a report to the Sejm and the Senate on the activities of the SDC during the preceding year, no later than 31 May of each year. It adds that the report submitted to Parliament also includes a description of the activities of the SDC TIA, including the topics addressed and the decisions taken. ***The Committee would welcome receiving a copy of the annual report of the activities of the Social Dialogue Council, with respect to matters relating to international labour standards covered by the Convention (Article 5(1)).***

C006 - Night Work of Young Persons (Industry) Convention, 1919 (No. 6)*Observation 2017*

The Committee notes the observations of the General Workers' Union (UGT), received on 28 August 2017, and of the General Confederation of Portuguese Workers (CGTP-IN), received on 1 September 2017.

Article 2(2) of the Convention. Exceptions to the prohibition of night work by young persons. In its previous comments, the Committee noted that the Labour Code of 2003 had been revised and the night work of young persons under 18 years of age is now covered by section 76 of the Legislative Decree No. 7/2009 (Labour Code of 2009). The Committee noted that under section 76(1) a young person of less than 16 years of age cannot work between 8 p.m. and 7 a.m., and under section 76(2) a young person of 16 years or more cannot work between 10 p.m. and 7 a.m. except in the conditions determined by the following paragraphs. The Committee therefore noted that section 76(3) of the Labour Code allows young persons of 16 years or more to perform night work: (i) in sectors of activity determined by a collective agreement, except during the period between midnight and 5 a.m.; or (ii) in cultural, artistic, sporting or advertising activities, where there are objective grounds for doing so and on condition that he/she is granted a compensatory period of rest equal to the number of hours worked. The Committee therefore requested the Government to take the necessary measures to specify the activities in which night work may be authorized for children over 16 years of age.

The Committee takes notes of the observations of the CGTP-IN according to which the Government has not amended the legislation, as per the Committee's request. The Committee once again notes the allegations made by the CGTP-IN reiterating its previous comments that the national legislation does not expressly state the sectors of activity in which night work is authorized for young persons over 16 years of age. The CGTP-IN further alleges that this task is left to collective bargaining which could lead to a generalization or widespread habit in practice, which is not permitted by the Convention. The Committee also notes the UGT's statement that in the past years the participation of minors under 18 years of age in artistic activities has seen a growth in recent years and that it is important that such work is performed in a way that will not affect their physical and psychological development.

The Committee notes the Government's indication in its report that the regulations governing the protection of minors performing hazardous work should be taken into account. With regard to the work of children in artistic performances, the Committee refers to the Minimum Age Convention, 1973 (No. 138), ratified by Portugal in 1998, Article 8 of which authorizes the undertaking of such performances under certain conditions. With regard to section 76(3) of the Labour Code which authorizes the night work of young persons between the ages of 16 and 18 years in sectors to be determined by collective agreement, the Committee recalls once again that according to *Article 2(1)* of the Convention, young persons under 18 years of age shall not be employed during the night in any industrial undertaking, other than an undertaking in which only members of the same family are employed, and in the cases listed in *Article 2(2)* of the Convention, that is, in work which, by reason of the nature of the process, is required to be carried on continuously day and night. **The Committee therefore requests the Government to take the necessary measures to specify the activities in which night work may be authorized for children over 16 years of age as per section 76(3)(a) of the Labour Code of 2009, so as to be in conformity with Article 2(1) and (2) of the Convention.**

C081 - Labour Inspection Convention, 1947 (No. 81)*Observation 2017*

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN) and the General Workers' Union (UGT) received with the Government's reports.

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

The Committee notes the report of the committee set up to examine the representation alleging non-observance by Portugal of these Conventions, and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Union of Labour Inspectors (SIT), adopted by the Governing Body at its 324th Session (June 2015).

Article 3 of Convention No. 81 and Article 6 of Convention No. 129. Duties entrusted to labour inspectors. The Committee notes the Government's indications, in reply to the request of the tripartite committee, on the decrease in the administrative support staff of the Working Conditions Authority (ACT), that any administrative tasks assumed by labour inspectors are only those related to their primary functions (such as entering information into the ACT database), and are not estimated to account for more than 20 per cent of the working time of labour inspectors. On the other hand, the Committee notes the observations made by the UGT that labour inspectors should not be forced to carry out ancillary tasks in the absence of sufficient support staff. The Committee observes that the Government does not provide further information concerning the allegations made by the SIT in the context of the article 24 representation that labour inspectors are assigned logistical and maintenance tasks (visiting auto repair shops, repairing facilities, transporting equipment, photocopying, etc.). **The Committee requests the Government to provide information on the measures it had indicated in the context of the representation that it would take, to rationalize resources and simplify administrative procedures. The Committee also requests the Government, in line with the tripartite committee, to provide specific information, where applicable, on the proportion of time spent by labour inspectors on logistical and maintenance tasks in relation to the primary functions of labour inspection as outlined by Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129.**

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Status and conditions of service of labour inspectors. The Committee notes that the tripartite committee observed that the wages of labour inspectors were significantly lower than those of certain other types of inspectors covered by Legislative Decree No. 170/2009 (such as inspectors in the General Inspectorate for Finance) and that the strategy paper of the ACT for 2013–15 had identified the demotivation of labour inspectors in view of the lack of adequate incentives as a weakness of the ACT. **The Committee requests the Government, in line with the tripartite committee, to take measures to ensure that the remuneration levels for labour inspectors is commensurate with that of other inspectors exercising similar functions. It further requests the Government, in line with the tripartite committee, to take measures to ensure that labour inspectors enjoy career prospects that take into account their merit, experience and levels of responsibility and to discuss this matter with the social partners. The Committee requests the Government to provide information on progress made on these matters.**

Overtime. The Committee notes that the Government, in reply to the tripartite committee's conclusions on the necessity for labour inspectors to have regular and sufficient time off work, indicates that the financial and economic crisis had led to the need for labour inspectors to carry out paid overtime, but that requests for urgent interventions have now decreased. **The Committee requests the Government to provide information on the amount of overtime currently being worked by inspectors.**

Article 10 of Convention No. 81 and Article 14 of Convention No. 129. Sufficient number of labour inspectors. The Committee observes that the tripartite committee noted that the strategy paper of the ACT stated that the shortage of human resources had been recognized as one of the weaknesses of the ACT; and that the tripartite committee observed that the workload of labour inspectors had increased as a result of the financial and economic crisis. The Committee also notes the observations made by the CGTP-IN and the UGT on the insufficient number of labour inspectors and other support staff which, according to the trade unions, has been significantly decreasing since 2011 as retired staff have not been replaced. In this respect, the Committee welcomes the Government's indication that the ACT is in the process of recruiting 117 labour inspectors, in addition to the 314 labour inspectors currently working at the ACT. **Recalling that**

the tripartite committee requested the Government to maintain a sufficient number of labour inspectors to ensure the effective exercise of inspection duties, the Committee requests the Government to provide information on the progress made with the recruitment of the labour inspectors referred to by the Government and any training or other measures taken to facilitate the rapid integration of these recruited inspectors in light of current realities and labour market developments.

Article 11(1)(a) of Convention No. 81 and Article 15(1)(a) of Convention No. 129. Office facilities and equipment. The Committee notes that the tripartite committee observed from the strategy paper of the ACT that the inadequacy of the material resources had been recognized as one of the weaknesses of the ACT. The Committee also notes the observations made by the UGT concerning budgetary restrictions of the ACT. In this respect, the Committee notes the Government's reference to ongoing efforts to improve the facilities of the decentralized labour inspection offices (ten of the 32 decentralized offices have been given new facilities), which had previously been noted by the tripartite committee. The Committee also notes the Government's indication that the modernization of work equipment is a constant goal of the ACT, for which ongoing investments are being made. **The Committee requests the Government to continue to take the necessary measures to ensure that all labour inspection services at the central and decentralized levels are adapted to the needs of the service, and to provide further details on any measures taken to improve the current situation.**

Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Adequate frequency and thoroughness of inspections to secure compliance. The Committee observes that the tripartite committee noted a decrease in the number of workplaces covered by inspections. In this respect, the Committee notes from the statistical information provided by the Government and by the ACT on its website that the number of workplaces covered by labour inspections increased between 2013 and 2016 (from 29,539 in 2013, to 36,076 in 2016). **Welcoming the positive trend in the number of workplaces covered by labour inspections, the Committee requests the Government to continue to ensure that a sufficient number of inspections of adequate thoroughness are undertaken. In this respect, it also requests the Government to provide information on the inspection strategy pursued to achieve a satisfactory coverage of workplaces by sufficiently thorough labour inspection visits (such as inspections targeted at workplaces with a high rate of occupational accidents and diseases and any criteria and time frame for follow-up visits).**

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

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

Observation 2017

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 and 129 together.

The Committee notes the observations made by the General Confederation of Portuguese Workers – National Trade Unions (CGTP–IN) and the General Workers' Union (UGT) received with the Government's reports.

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

The Committee notes the report of the committee set up to examine the representation alleging non-observance by Portugal of these Conventions, and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Union of Labour Inspectors (SIT), adopted by the Governing Body at its 324th Session (June 2015).

Article 3 of Convention No. 81 and Article 6 of Convention No. 129. Duties entrusted to labour inspectors. The Committee notes the Government's indications, in reply to the request of the tripartite committee, on the decrease in the administrative support staff of the Working Conditions Authority (ACT), that any administrative tasks assumed by labour inspectors are only those related to their primary functions (such as entering information into the ACT database), and are not estimated to account for more than 20 per cent of the working time of labour inspectors. On the other hand, the Committee notes the observations made by the UGT that labour inspectors should not be forced to carry out ancillary tasks in the absence of sufficient support staff. The Committee observes that the Government does not provide further information concerning the allegations made by the SIT in the context of the article 24 representation that labour inspectors are assigned logistical and maintenance tasks (visiting auto repair shops, repairing facilities, transporting equipment, photocopying, etc.). **The Committee requests the Government to provide information on the measures it had indicated in the context of the representation that it would take, to rationalize resources and simplify administrative procedures. The Committee also requests the Government, in line with the tripartite committee, to provide specific information, where applicable, on the proportion of time spent by labour inspectors on logistical and maintenance tasks in relation to the primary functions of labour inspection as outlined by Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129.**

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Status and conditions of service of labour inspectors. The Committee notes that the tripartite committee observed that the wages of labour inspectors were significantly lower than those of certain other types of inspectors covered by Legislative Decree No. 170/2009 (such as inspectors in the General Inspectorate for Finance) and that the strategy paper of the ACT for 2013–15 had identified the demotivation of labour inspectors in view of the lack of adequate incentives as a weakness of the ACT. **The Committee requests the Government, in line with the tripartite committee, to take measures to ensure that the remuneration levels for labour inspectors is commensurate with that of other inspectors exercising similar functions. It further requests the Government, in line with the tripartite committee, to take measures to ensure that labour inspectors enjoy career prospects that take into account their merit, experience and levels of responsibility and to discuss this matter with the social partners. The Committee requests the Government to provide information on progress made on these matters.**

Overtime. The Committee notes that the Government, in reply to the tripartite committee's conclusions on the necessity for labour inspectors to have regular and sufficient time off work, indicates that the financial and economic crisis had led to the need for labour inspectors to carry out paid overtime, but that requests for urgent interventions have now decreased. **The Committee requests the Government to provide information on the amount of overtime currently being worked by inspectors.**

Article 10 of Convention No. 81 and Article 14 of Convention No. 129. Sufficient number of labour inspectors. The Committee observes that the tripartite committee noted that the strategy paper of the ACT stated that the shortage of human resources had been recognized as one of the weaknesses of the ACT; and that the tripartite committee observed that the workload of labour inspectors had increased as a result of the financial and economic crisis. The Committee also notes the observations made by the CGTP–IN and the UGT on the insufficient number of labour inspectors and other support staff which, according to the trade unions, has been significantly decreasing since 2011 as retired staff have not been replaced. In this respect, the Committee welcomes the Government's indication that the ACT is in the process of recruiting 117 labour inspectors, in addition to the 314 labour inspectors currently working at the ACT. **Recalling that the tripartite committee requested the Government to maintain a sufficient number of labour inspectors to ensure the effective exercise of inspection duties, the Committee requests the Government to provide information on the progress made with the recruitment of the labour inspectors referred to by the Government and any training or other measures taken to facilitate the rapid integration of these recruited inspectors in light of current realities and labour market developments.**

Article 11(1)(a) of Convention No. 81 and Article 15(1)(a) of Convention No. 129. Office facilities and equipment. The Committee notes that the tripartite committee observed from the strategy paper of the ACT that the inadequacy of the material resources had been recognized as one of the weaknesses of the ACT. The Committee also notes the observations made by the UGT concerning budgetary restrictions of the ACT. In this respect, the Committee notes the Government's reference to ongoing efforts to improve the facilities of the decentralized labour inspection offices (ten of the 32 decentralized offices have been

given new facilities), which had previously been noted by the tripartite committee. The Committee also notes the Government's indication that the modernization of work equipment is a constant goal of the ACT, for which ongoing investments are being made. **The Committee requests the Government to continue to take the necessary measures to ensure that all labour inspection services at the central and decentralized levels are adapted to the needs of the service, and to provide further details on any measures taken to improve the current situation.**

Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Adequate frequency and thoroughness of inspections to secure compliance. The Committee observes that the tripartite committee noted a decrease in the number of workplaces covered by inspections. In this respect, the Committee notes from the statistical information provided by the Government and by the ACT on its website that the number of workplaces covered by labour inspections increased between 2013 and 2016 (from 29,539 in 2013, to 36,076 in 2016). **Welcoming the positive trend in the number of workplaces covered by labour inspections, the Committee requests the Government to continue to ensure that a sufficient number of inspections of adequate thoroughness are undertaken. In this respect, it also requests the Government to provide information on the inspection strategy pursued to achieve a satisfactory coverage of workplaces by sufficiently thorough labour inspection visits (such as inspections targeted at workplaces with a high rate of occupational accidents and diseases and any criteria and time frame for follow-up visits).**

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

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

Observation 2017

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN) and the General Workers' Union (UGT), transmitted with the Government's report. **The Committee requests the Government to provide its comments in this respect.**

Articles 1–4 of the Convention. Formulation and implementation of policies and programmes of vocational guidance and vocational training. The Committee notes with **interest** the set of measures undertaken by the Government with a view to developing the workforce and adapting it to the requirements of the labour market. The Government refers, among other measures, to the adoption in October 2013 of the Cross-cutting Training Programme for job activation and jobseeking techniques, which sets out the activities to be implemented by the Employment and Vocational Training Institute (IEFP) to improve the employability of unemployed people and to provide them with support in relation to entrepreneurship. It also refers to the implementation of the Youth Guarantee Programme since January 2014, which includes coordinated strategies and guidelines concerning vocational guidance, vocational training and employment for young people under the age of 30 who are not in education, employment or training (NEET). The Programme includes, among its objectives, the development of vocational guidance structures and systems, as well as the promotion of education and training at different qualification levels to improve the skills profiles of young people. In March 2014, 241 Centres for Qualification and Vocational Education (CQEP) were established in different educational institutions to bridge gaps between education, training and employment. The CQEP provides information and personalized guidance to youth and adults, including vocational training, certificates which have double validity (educational and vocational) and related educational opportunities. In 2015, the Qualification Needs Anticipation System (SANQ) was created to provide a comprehensive analysis of skills supply and demand with the aim of defining training options and updating the National Catalogue of Qualifications. Based on the cited analyses, the SANQ developed the Portal of Qualifications, which provides information to various interested parties with regard to vocational training and other educational opportunities, as well as in relation to their employment prospects. The Government adds that measures were carried out to reduce school drop-out rates, including dissemination activities on the education and vocational training system to encourage youth participation. In this regard, the Committee notes that, according to the 2015 Education and Training Monitor of the European Commission, Portugal has significantly reduced its early school leaving rate, and tertiary education attainment has greatly improved. Enrolment in vocational education and training has continued to increase and a first set of new short-cycle higher technical courses (TeSP) were launched during the 2014–15 academic year. In its observations, the UGT indicates that investment dropped with respect to continuing vocational training and retraining, as well as recognition and validation of competencies acquired. In addition, the UGT indicates that there is widespread non-compliance on the part of employers, who do not observe the workers' right to 35 annual hours of vocational training. The UGT adds that this has had a significant impact due to the large number of adults in the labour market that have not completed secondary education. The UGT also points out that the IEFP lacks the necessary human resources to ensure its proper functioning. Finally, the CGTP–IN indicates that the CQEP does not function properly due to its limited number and lack of staff. The UGT adds that it is necessary to provide vocational training services for the employed through the public employment services, and to develop a statistical information system in relation to vocational training. **The Committee requests the Government to continue to provide updated information, including statistical data disaggregated by age and sex on the impact of the policies and programmes implemented in relation to vocational guidance and training.**

Article 5. Cooperation of the social partners. In reply to the Committee's previous comments, the Government indicates that employers' and workers' organizations participate in the Standing Committee for Social Dialogue of the Economic and Social Council with regard to the formulation of policies and programmes of vocational guidance and vocational training. Furthermore, the social partners participate in the adoption of the strategic action plan of the IEFP and of the Vocational Training and Employment Centres through their respective Advisory Councils at the regional and local levels. Finally, the Government indicates that the social partners are members of the Coordinated Committee charged with the implementation and evaluation of the Youth Guarantee Programme. In its observations, the CGTP–IN requests the reestablishment of the National VET Council, which was the body responsible for the formulation, coordination and implementation of vocational training policies and programmes. The CGTP–IN and the UGT further indicates that the social partners are consulted within the cited bodies, but they do not have the capacity to influence the policies and programmes of vocational guidance and vocational training. **The Committee requests the Government to provide more specific information on the manner in which the representative organizations of employers and workers have been consulted in the formulation, implementation and monitoring of vocational training and vocational guidance policies and programmes.**

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

Observation 2017

The Committee notes the observations of the General Workers' Union (UGT), and the brief observation of the Confederation of Portuguese Industry (CIP), transmitted by the Government. It also notes that the International Organisation of Employers (IOE) supports the observations of the CIP.

Article 5 of the Convention. Effective tripartite consultations. The Committee notes, that in its observations, the CIP indicates that improvements have been made to bring together the social partners and the Government through the holding of tripartite meetings. It also notes the observations of the UGT which indicate that, for Conventions which have been ratified or which are to be denounced, the consultation procedures are respected in a timely and appropriate manner. However, the UGT reiterates its previous observations on the procedure followed for the ratification of Conventions, which it considers to be long, complicated and lacking in transparency. The Committee notes the Government's reply, which repeats that feasibility studies on the ratification of new Conventions are complex, as they involve the consultation of several ministerial departments, depending on the subjects addressed by the Conventions in question, that it is often necessary to assess the possibility of making the legislative amendments identified as being essential in the studies, and that this

assessment varies depending on the content of the Convention. Moreover, the public administration often lacks the human resources needed to carry out feasibility studies rapidly. The Committee also notes the Government's reply indicating that it has held consultations with the most representative employers' and workers' organizations on all of the matters listed in *Article 5* of the Convention. The Government points out that a feasibility study on the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, is in progress. The Government adds, with regard to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, that two consultations with the social partners concerning the Government's reply to the questionnaire on the subject were held on 9 and 15 March 2017. The Committee also notes the fact that, in the context of the 106th Session of the International Labour Conference June 2017, the Government held an information session and a technical discussion with the social partners, with a view to determining the composition of the Government delegation during the Conference. Lastly, the Committee notes that on 13 June 2017, the Government held tripartite consultations on violence and harassment in the world of work, on which the first discussion will be held at the 107th Session of the Conference. ***The Committee requests the Government to provide detailed and up-to-date information on the content and outcome of all tripartite consultations held on each of the matters covered by Article 5(1) of the Convention. The Committee also reiterates its hope that progress will continue to be made with regard to tripartite consultations on international labour standards, as required by the Convention, and it requests the Government to continue to keep the Office informed of any developments.***

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

Observation 2017

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN) and the General Workers' Union (UGT), forwarded by the Government. ***The Committee requests the Government to provide its comments in this regard.***

Legislative developments. In reply to the Committee's comments, the Government indicates that certain minor legislative developments relating to termination of the employment relationship in the public service were made during the reporting period. The Government indicates that the termination of the employment relationship of workers in the public sector is now governed by sections 288–313 of the General Public Service Labour Act (Act No. 35/2014), which entered into force on 1 August 2014. However, the Government indicates that this legislative change did not give rise to any substantive reform. The Government emphasizes that section 11(1) of Act No. 35/2014, which determines the transitional regime, provides that the disciplinary provisions are immediately applicable to acts committed, proceedings initiated and penalties that are being served if, at the date of entry into force, that regime is more favourable to the worker and offers better guarantees to protect the worker's rights to defence and a hearing. ***The Committee requests the Government to continue providing information to enable it to assess the impact of the legislative reforms in respect of the maintenance of employment.***

Article 2(3) of the Convention. Adequate safeguards in the event of recourse to contracts of employment for a specified period. In its previous comments, the Committee requested the Government to provide information on the protection afforded to workers with contracts for a specified period, and to indicate the number of workers affected by these measures. In its report, the Government refers to the papers produced by the Strategy and Planning Office of the Ministry of Labour, Solidarity and Security. In this regard, the Committee notes that the document entitled "Green Paper 2017" contains statistics on contracts for a specified period, according to which it is estimated that in 2015 a total of 62.9 per cent of unemployment insurance benefits (111,682 workers) were provided as a result of the expiry of the contract period. The Committee also notes the information contained in that paper that the unemployment benefits provided to persons with contracts for a specified period are increasing, as in 2009 they accounted for 46.2 per cent of total unemployment benefits, compared with 62.9 per cent in 2015. ***The Committee once again requests the Government to provide information on the manner in which the protection afforded by the Convention is ensured to workers who have concluded an employment contract for a specified period, with a view to preventing abusive recourse to such contracts, including the relevant court rulings. It also requests the Government to continue providing information, including data on the total number of contracts for a specified period of time in comparison with contracts for an indefinite period.***

Article 2(5). Micro-enterprises. The Committee notes that the Government's report does not contain any information on this subject. ***The Committee once again requests the Government to provide information on the application of the Convention to micro-enterprises.***

Article 4. Justification for termination. The Committee previously requested the Government to provide examples of the application of the legislative amendments of 2014 regarding the valid reason for termination of employment on the grounds of the reduction of jobs or dismissals for unsuitability. The CGTP–IN and the UGT reiterate that, by placing criteria of performance, qualifications and labour costs above the criteria of seniority and experience, Act No. 27/2014 does not ensure objectivity and allows an arbitrary choice of workers by the employer, as the choice may be made for the benefit of the enterprise. They add that these criteria do not safeguard employment security, the prohibition of dismissal except with a valid reason, the principle of equality and non-discrimination, as workers with greater seniority are affected by this provision. The Committee notes that, according to the statistics contained in the "Green Paper of 2017", dismissal by a reason of the suppression of jobs and dismissal for unsuitability have decreased, as in 2015 they accounted for 8.7 and 0.3 per cent respectively of unemployment insurance benefits. The Committee also notes the court rulings provided by the Government relating to termination of employment on grounds of the suppression of the job. Nevertheless, it observes that these court decisions do not illustrate the legislative changes introduced by Act No. 27/2014. ***The Committee requests the Government to provide copies of court rulings with its next report which illustrate the application by the courts of the criteria set out in Act No. 27/2014.***

Article 8. Right of appeal. The Committee notes that the Government has not provided information in its report on the legislative provisions governing claims for unjustified dismissal, or on the role of mediation and arbitration. The Committee notes that court decisions relating to dismissal and collective dismissal are regulated by sections 387 and 388 of the Labour Code. It also notes that the Labour Code envisages mediation and arbitration solely in collective labour disputes arising out of the conclusion of a collective agreement (section 526 et seq. of the Labour Code). The Committee further notes the statistics contained in the "Green Paper" on the cases of dismissal determined by courts of first instance. In this respect, it notes that in 2015 a total of 5,529 appeals against dismissal were resolved by courts of first instance, and that in 2013 the average period for their settlement through ordinary procedures was 16 months. ***The Committee requests the Government to provide information on the application of the legislative provisions respecting appeals against unjustified dismissal. It also requests the Government to indicate whether alternative means of dispute resolution are available for workers who have been dismissed.***

Article 10. Adequate compensation for unjustified dismissal. The Committee notes that section 389(2) of the Labour Code provides that, when the court finds that dismissal is unjustified, but that the irregularity is strictly procedural, the worker shall receive half of the compensation envisaged by the law. ***The Committee requests the Government to provide court rulings which illustrate the application in practice of section 389(2) of the Labour Code.***

Article 12. Severance allowance and other income protection measures. The CGTP–IN reiterates that compensation for the termination of the employment contract has been drastically reduced and that, in the current economic situation characterized by a high unemployment rate and the reduction in the amount and duration of unemployment benefit, this reduction is in violation of the right of workers to a decent life. In this regard, the Committee notes that section 366(1), as amended by Act No. 69/2013, which is applicable to almost all cases of termination of employment which give entitlement to compensation, sets the severance allowance at 12 days' basic wages and benefits for each full year of seniority. The Committee also notes that, in the case of employment contracts for an indefinite period, workers are entitled to compensation during the first three years equivalent to 18 days of their basic wage and benefits for each full year of seniority, and 12 days of their basic wage and benefits for subsequent years. ***The Committee requests the Government to provide information on the implementation of this provision in practice, including on the impact of the change in severance payments for the workers concerned, and to provide***

statistical data, disaggregated by age and sex, concerning workers affected by this measure.

C162 - Asbestos Convention, 1986 (No. 162)

Observation 2017

The Committee notes the observations of the General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN), received with the Government's report.

Article 21 of the Convention. Notification of occupational diseases caused by asbestos. The Committee notes the statistical information provided by the Government on the number of workers exposed to asbestos, cases of occupational disease reported and the activities carried out by the labour inspection services to enforce the relevant legislation. The Committee notes with **concern** that the CGTP–IN refers, with respect to the under-reporting of occupational diseases related to asbestos exposure, to a 2015 study, according to which 97 per cent of cases of malignant mesothelioma caused by exposure to asbestos were not reported as occupational diseases. **Recalling the resolution concerning asbestos, adopted by the 95th Session of the International Labour Conference, June 2006 and, referring to its comments on the application of Articles 4(1) and 11(d) and (e) of the Occupational Safety and Health Convention, 1981 (No. 155), and Articles 2–5 of its Protocol of 2002, concerning the measures needed and taken to address the under reporting of occupational diseases, the Committee requests the Government to provide information on the measures taken to ensure the functioning of the system of notification of occupational diseases caused by asbestos and, in that regard, to indicate the number of cases of occupational diseases caused by exposure to asbestos that have been reported in the country over the last five years as well as the cases of malignant mesothelioma over the same period.**

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

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

Observation 2017

The Committee recalls that it had previously requested the Government to provide its comments on the 2012, 2014 and 2015 observations made by the International Trade Union Confederation (ITUC) which referred to cases of anti-union discrimination, interference by employers in trade union internal affairs and refusal to bargain collectively. The Committee notes with **deep regret** that once again, no information has been provided by the Government in reply to the numerous allegations of the violation of the Convention in practice. The Committee notes the observations of the Confederation of Labour of the Russian Federation (KTR) received on 31 October 2017, which refer to the matters raised by the Committee below and to numerous cases of alleged violations of the Convention. **Noting with concern the persistence and seriousness of the numerous allegations of acts of anti-union discrimination and interference, the Committee urges the Government to provide its comments on the abovementioned observations and to ensure that investigations are conducted by the authorities into the 2012, 2014, 2015 and 2017 ITUC and KTR allegations.**

Articles 1, 2 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and interference. In its previous comments the Committee had noted section 136 of the Criminal Code which punishes acts of discrimination, including anti-union discrimination, and had requested the Government to provide information on the number of people found guilty and convicted under the abovementioned provision, as well as the penalties imposed. The Committee notes the Government's indication that no such information exists. The Government refers, nevertheless, to two cases where the courts have concluded to the absence of anti-union discrimination. The Committee notes, however, that according to the KTR, no one has ever been found guilty and convicted pursuant to section 136 of the Criminal Code; moreover, no one has ever been prosecuted for violation of trade union rights, including acts of anti-union discrimination and interference, in general.

Further in this respect, the Committee recalls that in its previous comments, the Committee had deeply regretted the lack of progress in the implementation of 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, which the Government and employers' representatives had agreed to examine in the framework of the Russian Tripartite Commission for the Regulation of Social and Labour Relations (RTK). The Committee recalls that this proposal refers to the need to draft specific legislative provisions with a view to render protection against violations of trade union rights, in general, and anti-union discrimination, in particular, more effective, and suggests to create a body with a specific mandate to examine cases of violations of trade union rights, including anti-union discrimination (such a mandate can also be undertaken by an existing body). The proposal also calls for training of relevant bodies and courts on freedom of association. The Committee notes that the Government indicates that these recommendations were considered in 2013 by a tripartite working group of the RTK and in December 2016 and were included in the plan of action for 2017. The Government further indicates that a number of legal acts aimed at the development of social partnership have been adapted, several pieces of legislation amended and a number of activities were held to promote social partnership at the regional level. The Committee notes the KTR's indication that it had tried to engage with the Office of the Prosecutor on a possible way forward in addressing violations of trade union rights, in particular as regards anti-union discrimination and interference to no avail. The Committee further notes the statistics collected by the KTR on the alleged violations of the Convention in 2016–17. The Committee once again **deeply regrets** the lack of progress in the implementation of the KTR–FNPR proposal, and in particular in the drafting of specific legislative provisions protecting workers from anti-union discrimination, as well as the lack of engagement from the relevant authorities in addressing issues of anti-union discrimination and interference. **The Committee once again urges the Government to implement, in consultation with the social partners and without further delay, the 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. In its previous comments, the Committee had noted 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 noted with concern that despite its several requests, section 31 of the Labour Code had not been amended. The Committee notes the Government's indication that the election of a representative body other than the primary trade union is an extreme measure and occurs only when there is no full representation (more than 50 per cent) of workers' interests by a trade union organization; the Government thus considers that there is no need to amend section 31 of the Code. The Committee recalls that, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and that negotiation between employers or their organizations and representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. The Committee emphasizes that where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other workers' representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining (see the 2012 General Survey on the fundamental Conventions, paragraphs 239–240). The Committee **deeply regrets** that despite its numerous requests, section 31 of the Labour Code has not been amended. **The Committee expects the Government to take immediate and decisive action to amend section 31 of the Labour Code and requests it to provide information on any progress made in this regard.**

The Committee reminds the Government that it can avail itself of the technical assistance of the Office.

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

Observation 2017

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 31 October 2017, which were sent to the Government for its comments.

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments, initially made in 2014.

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 31 October 2014, which were sent to the Government for its comments.

Articles 1 and 2 of the Convention. Gender pay gap and its underlying causes. The Committee notes that the Government's 2014 report does not contain information in reply to its previous comments. The Committee also notes the Government's report submitted in 2011, which indicates that, according to the statistical information provided by the Federal State Statistics Service (Rosstat), there is a wide gender wage gap (36 per cent), with the average wages of women amounting to 64 per cent of those of men in 2011. The main reason for these differences in wages is the representation of men and women in different areas of employment. The statistics show significant horizontal occupational gender segregation, with women being concentrated in hotel and restaurant services, education, health care and social services, and men in transport and communications, construction and production, and the distribution of electricity, gas and water. The Committee notes from the Government's report on the implementation of the European Social Charter that the average gender wage gap by economic sector varies from 46 per cent in leisure activities, culture and sports to 11 per cent in education. The wages of women were lower than the wages of

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men in all sectors and all occupational categories (managers, specialists, other “white-collar” workers and “blue-collar” workers); they ranged from 57 per cent of men’s wages among average-skilled workers up to 84 per cent among unskilled workers. In this report, the Government also indicates that part of the difference in wages between men and women is explained by the payment of compensation to men for work in harmful, dangerous and difficult working conditions where it is prohibited to employ women, and for overtime, work on weekends and public holidays, which is prohibited for “certain categories of women” (RAP/RCha/RUS/3(2014), 20 December 2013, pages 27–30). While noting that the legal framework established by the Labour Code reflects the principle of equal remuneration for men and women for work of equal value, the Committee notes that in light of the persistent gender wage gap and the legislative restrictions referred to above, the principle is not applied effectively in practice. **The Committee asks the Government to take concrete steps to address horizontal and vertical occupational gender segregation and inequalities in remuneration existing in practice between men and women, including specific measures to address the legal and practical barriers to the employment of women and stereotypical attitudes and prejudices with a view to reducing inequalities in remuneration, and to indicate how the social partners cooperate in this regard. The Government is also requested to provide information on the following points:**

- (i) the measures taken to promote the development and use of objective job evaluation methods in both the private and the public sectors;
- (ii) the work and outcome of the Special Task Force on gender equality set up in 2010 in relation to equal remuneration; and
- (iii) statistical information, disaggregated by sex and economic sector, showing the evolution of the participation of men and women in the labour market and their corresponding earnings.

Enforcement. The Committee once again notes the absence of information concerning the enforcement of the legal provisions relating to equal remuneration, as well as on cases dealt with by the competent administrative and judicial authorities. The Committee is concerned that this may be due to the lack of awareness of or access to the respective rights and procedures, and to the remedies provided for under the law, or to fear of reprisals. **The Committee once again asks the Government to take appropriate measures to raise public awareness of the relevant legislation, and of the procedures and remedies available in relation to equal remuneration for men and women for work of equal value. Please provide information on equal pay cases dealt with by the competent administrative and judicial authorities.**

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

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

Observation 2017

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2012.

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

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**Observation 2017**

The Committee notes the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS), received on 7 July 2017, the observations of the Serbian Association of Employers (SAE), received on 31 August 2017, and the observations of the Trade Union Confederation "Nezavisnost" received on 14 November 2017. The Committee notes that the observations presented by the CATUS, which relate to a strike in an individual enterprise, fall outside the scope of the Convention and it will therefore not address these.

Articles 2 and 5 of the Convention. Effective tripartite consultations. The Government recalls that the Social and Economic Council of the Republic of Serbia (SEC), established in 2001, is an independent tripartite body comprised of six Government representatives, six SAE representatives, four CATUS representatives and two Nezavisnost representatives. The Committee notes that the social partners freely choose their representatives to the SEC and their substitutes within their own organizations. The Government indicates that, during the reporting period, the SEC held 21 sessions in which it discussed labour legislation, collective bargaining, social dialogue, education, media, economic and financial matters, and international cooperation. In its observations, Nezavisnost expresses concern with regard to the application of the Convention, indicating that social dialogue at all levels of collective bargaining, labour and social legislation and reform strategy have been reduced to a minimum, while in certain areas it is non-existent. It also observes that not all draft laws in the area of labour and social legislation are submitted to the SEC for its opinion, but instead the Government is submitting legislative proposals directly to the National Assembly without previously consulting the SEC. Nezavisnost provides a series of examples in this respect and urges the Government to establish Rules of Procedure that end this practice. Nezavisnost also observes that the representative workers' organizations have also been excluded from participating in drafting of labour and social legislation. The Committee notes that the Representativeness Committee, a second-instance authority responsible for determining the representativeness of workers' organizations, ceased functioning in May 2017. According to Nezavisnost, this has a direct impact upon collective bargaining at all levels. Nezavisnost also observes that the Government has taken over the determination of representativeness, in that the minister may take decisions on the representativeness of an organization without seeking the Committee's advice. The Committee also notes the observations of the SAE indicating that, contrary to *Article 5(2)* of the Convention, there are no established time intervals for tripartite consultations. It adds that consultation with the social partners on the matters related to international labour standards covered under *Article 5(1)* often occurs late or not at all. **The Committee requests the Government to provide specific information on the content, outcome and frequency of tripartite consultations held on the matters concerning international labour standards covered by the Convention (Article 5(1)(a)–(e)). It also requests the Government to communicate information concerning any reports or recommendations made as a result of the consultations.**

C088 - Employment Service Convention, 1948 (No. 88)

Observation 2017

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), included in the Government's report, supported by the International Organisation of Employers (IOE) in its communication received on 1 September 2017. It also notes the Government's replies to those observations, included in its report.

Article 1 of the Convention. Contribution of the employment service to employment promotion. The Committee notes the adoption of the consolidated text of the Employment Act, adopted by Royal Legislative Decree No. 3/2015 of 23 October 2015, which establishes the following instruments for the coordination of the National Employment System: the Spanish employment activation strategy, the annual employment policy plans and public employment services information system. Section 2 of the Employment Act includes among its employment policy objectives the adoption of an approach to prevent unemployment through training activities which enable workers to adapt their vocational skills to the labour market. It also seeks to provide individualized services to help the economically active population to enter, remain and progress within the labour market, and to assist enterprises in improving their competitiveness. In this regard, the Government refers, in its report, to the adoption of the Annual Employment Policy Plan (PAPE 2016) which specifies the objectives set out in the Spanish Employment Activation Strategy 2014–2016 and outlines the initiatives to be rolled out for the employment services in 2016. The Government adds that the PAPE 2016 is based on six target areas, the sixth of which refers specifically to the improvement of the institutional framework of the national employment services. This target area includes the following structural objectives to: improve the management, cooperation, coordination and communication of the national employment services as well as the quality of the services; boost the evaluation, innovation and modernization of these services; and promote public–private collaboration. The Government indicates that the number of active job offers within the framework of the single gateway for employment and self-employment has increased. In September 2014, the number of active job offers stood at 28,047, with a total of 109,002 posts, while in April 2017, there were 37,900 active offers, corresponding to 134,200 posts. The Government also indicates that, according to data from the Ministry of Education and Social Security, in April 2017, the number of registered unemployed persons was 3,702,317, the lowest in the past seven years. It adds that full-time permanent procurement rose by 20.7 per cent year on year, while temporary procurement rose by 14.5 per cent. The Committee nonetheless notes that, in their observations, the UGT and the CCOO express their concern about the decrease in the budget for the application of the active employment policies, which they consider has led to a weakening of the public employment services. In particular, the CCOO indicates that the budget cuts have led to a significant reduction in the number of staff of the public employment services, predominantly in employment advisers, who play a key role in reintegrating people into the labour market, especially the long-term unemployed. The CCOO also indicates that there are problems with the design and lack of evaluation of the programmes of the active employment policies, and shortcomings in coordination among the autonomous communities. In this respect, the CCOO requests that the Government carry out an evaluation of the efficiency of the public employment services, at the levels of the State and autonomous communities, with a view to determining the effectiveness of the measures taken and the challenges identified, particularly with regard to the reintegration into the labour market of young persons and the long-term unemployed. Lastly, the CCOO indicates that the rate of coverage of unemployment benefits fell from 78.4 per cent of unemployed persons in 2010 to 53.75 per cent in April 2017. **The Committee requests the Government to continue providing updated information, including statistics disaggregated by sex, age and autonomous community, to enable the effectiveness to be assessed of the State Public Employment Service and the employment services provided by the autonomous communities and, in particular, the manner in which the public employment services have contributed to labour market reintegration, especially of young persons, the long-term unemployed, persons with disabilities and persons in regions with higher levels of unemployment.**

Articles 4 and 5. Collaboration with the social partners. In its reply to the Committee's previous comments, the Government reiterates in its report that there was constant social dialogue during an intense period of reform in which it has always tried to seek agreement with the social partners. The Government indicates that the social actors were consulted in the ad hoc working groups and in the tripartite participative bodies set up for that purpose at state, autonomous community and local levels. The UGT emphasizes the importance of the institutional participation of the social partners in the consultative bodies of the State Public Employment Service and the National Employment System for the evaluation of employment policies and the formulation of proposals for the social dialogue agenda. However, the UGT maintains that these bodies, the General Council of the National Employment System and the General Council of the Public Employment Service, did not hold regular meetings between 2016 and 2017, despite the fact that their rules of internal procedure stipulate that at least two meetings a year should be held. The CEOE also considers that these bodies should meet more regularly and send sufficient advance notice of their meeting and the necessary documentation with a view to ensuring the effective participation of the social partners at those meetings. In its reply, the Government indicates that the participation of the social partners in the State Public Employment Service and in the employment services of the autonomous communities was strengthened following the enactment of the consolidated text of the Employment Act, under Royal Legislative Decree No. 3/2015, of 23 October 2015. **The Committee requests the Government to take measures to ensure that the general policy on employment services has been finalized following consultations with the representatives of the social partners, and to provide detailed information on the measures taken and their impact on the participation of the representatives of the social partners, especially in the consultative bodies of the State Public Employment Service and the National Employment System.**

Article 6. Functions of the public employment service. **The Committee requests the Government to provide updated information, including statistics and copies of reports or studies on the manner in which this Article of the Convention has been given effect. In particular, the Committee requests the Government to provide information on the compilation and analysis, in cooperation with the social partners and other authorities, of extensive information on the labour market situation and its predicted development, in the interests of aligning employment services with the needs of employers. In this respect, the Committee refers the Government to Paragraph 5 of the Employment Service Recommendation, 1948 (No. 83), which provides guidance on this matter.**

Articles 7 and 8. Special categories of workers. Youth employment. The Committee notes that the objectives of the employment policy set out in section 2(d) of Royal Legislative Decree No. 3/2015 include establishing appropriate policies for groups who have more difficulty reintegrating into the labour market, especially young persons, women, persons with disabilities, the long-term unemployed and persons over 45 years of age. In addition, the Committee notes that the objectives of the third target area of the PAPE 2016 on employment opportunities include promoting and sustaining the procurement of groups and sectors with difficulties, to provide work, experience and to sustain economic activity. In this connection, the Government's report refers to the increase, compared with 2015, in the allocation intended to finance the programme and services included in the third target area of the PAPE 2016 in order to increase work experience for unemployed persons, particularly persons with disabilities. Under the fourth target area, all services and programmes for active employment policies and job placement services shall also promote equal opportunity in access to employment. The Committee also notes the information provided by the Government on the measures carried out by the employment services to boost employment for young persons and the unemployed, and the impact of these. Nevertheless, the Committee notes that the UGT indicates in its observations that the unemployment rate among persons under 25 years is 41.66 per cent. **The Committee requests the Government to provide detailed information on the measures taken to find full and productive employment for persons vulnerable to decent work deficits and exclusion, especially young persons, women, persons with disabilities, the long-term unemployed and persons over 45 years. The Committee also requests the Government to provide statistical information disaggregated by sex, age and autonomous community on the results of measures adopted.**

Article 11. Cooperation between private and public employment agencies. The Committee notes that, based on the terms of the consolidated text of the Employment Act, the public employment services shall establish with employment agencies and entities (public or private, profit or non-profit making) contracts, agreements or other coordination instruments which help jobseekers find employment placements. The consolidated text of the Employment Act also sets out that, irrespective of the agent that undertakes placement in employment, account shall be taken of the public nature of the service, which shall be provided without charge for workers and employers. In addition, the agencies shall provide information on the workers attended to and the activities carried out, as well as the job offers and the skills required; guarantee the observance of the principle of equality in access to employment; and comply with the regulations in force regarding labour and social security. The Government also reiterates that through the framework agreement with employment placement agencies for collaboration with the public employment services, projects are coordinated for public-private collaboration in employment placement by public employment services. The CEOE considers that the implementation of the public-private collaboration model in employment placement is being hampered by administrative obstacles, which has decreased the quality of the service provision. In its reply, the Government indicates that the employment placement agencies simply have to present an affidavit, before starting their activities, to the State Public Employment Service, and that the competent departments may still carry out a subsequent check, control and inspection. The CCOO states that the private employment agencies are promoted to the detriment of the public employment services. **The Committee requests the Government to indicate the specific measures that have been adopted to guarantee the effective cooperation between the public employment agency and private employment placement agencies, and to provide statistical information in this respect.**

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Observation 2017

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the Government's replies to the previous observations included in its report.

Article 2 of the Convention. Insertion of labour clauses in public contracts. Legislative developments. In its previous comments, the Committee noted that Royal Decree No. 3/2011, regarding the consolidated text of the Public Contracts Act, does not contain any provisions expressly requiring the inclusion of labour clauses in public contracts and therefore gives no effect to the Convention. The Committee therefore requested the Government to take the necessary measures to ensure that the Convention is fully implemented in law and in practice. The Committee notes that, in their observations, the workers' organizations refer to the shortcomings in the previous legislation on public contracts in relation with the requirements under the Convention. They highlight aspects including the need to introduce legislative amendments that require the insertion of labour clauses in public contracts. In this respect, the Committee notes the adoption of Act No. 9/2017 (8 November 2017) on public sector contracts, which transposes the 2014 European Union Directive on public procurement into the Spanish legal framework. In its report, the Government indicates in general that the above Act relates to the provisions set out in the Workers Regulations in that the application of the collective agreements of the bidding enterprise prevail over that of the collective agreements governing the occupational groups carrying out the service. The UGT states in its observations that the transposition of the European Union Directive represents significant progress in socially responsible public procurement and that it could also contribute to remedying certain existing shortcomings in the previous legislation regarding public procurement. Lastly, the UGT refers to various provisions which set out limits to collective bargaining on the salaries of workers in the bidding enterprise, such as section 5 of Royal Decree No. 55/2017 (3 February 2017), which provides for the development of Act No. 2/2015 on exemptions from statutory indexation of 30 March, which provides that any revision of the cost of procurement based on an increase in the cost of labour shall be confined to any increase in public sector remuneration. In its reply, the Government indicates that this limit is intended to prevent, as a result of rulings against the administration, workers from bidding enterprises from gaining the status of public workers without going through the relevant selection procedure outside the public sector planning process. **The Committee trusts that the Government is taking measures to ensure that the application of the new Act on public sector contracts is in conformity with the requirements of the Convention. The Committee requests the Government to provide information on the application in practice of the new Act, including extracts of relevant judicial decisions, summaries of inspection reports and information on the number and nature of the violations detected.**

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

Observation 2017

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 August 2017 and 17 August 2017, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), supported by the International Organisation of Employers (IOE), included in the Government's report. It also notes the Government's replies to the previous observations, included in its report.

Articles 1 and 2 of the Convention. Labour market trends and implementation of an active employment policy. The Committee notes the adoption of the National Reform Programme (PNR) of 2017, in the framework of the coordination of the economic and budgetary policy, the "European Semester". The Government indicates in the PNR that the positive impact of the labour reform and other structural reforms have resulted, in recent years in Spain, in a steady pace of job creation and unemployment reduction. The aim of the PNR is to consolidate this trend and advance towards more inclusive and better quality employment through three concrete objectives: (1) increase the effectiveness of the National Employment System (SNE); (2) increase the effectiveness of training; and (3) improve the efficiency of the plans on activation and integration into employment. With regard to the labour market trends, the Government indicates in its report that in 2016, in annual terms, the trend towards job creation and unemployment reduction that started in the second half of 2014 was established. The Government adds that this trend has continued throughout 2017. In particular, according to data from the Economically Active Population Survey of the National Statistics Institute (INE), in the second quarter of 2017 the rate of job creation accelerated by 2.8 per cent owing to the growth in temporary employment. The growth rate of permanent employment remained steady at 1.8 per cent year on year, while the growth rate of temporary employment sped up, reaching 7.7 per cent per year. The employment rate among the 16-64 age group is 62.04 per cent and the activity rate is 75.06 per cent. The Government also indicates that the unemployment rate fell to 17.22 per cent in 2016, 2.78 percentage points less than the previous year, which is the highest fall in unemployment in the past decade. However, in its observations, the UGT maintains that the jobs created are of a precarious and very short-term nature, affecting 25.8 per cent of employees. In this regard, the Committee notes that, according to the Recommendation of the Council of the European Union on Spain's 2017 PNR, the country has one of the highest percentages of temporary employment in the European Union (EU) and many temporary contracts are very short. In addition, according to the Recommendation, the transition rates from temporary to permanent contracts are very low compared with the average in the EU. In its observations, the UGT also refers to the problem of involuntary bias, indicating that about 1.7 million persons work part time because they have not found full-time employment. For its part, the CCOO notes that in order to develop a good active employment policy it is necessary to have an adequate budget, and expresses its concern that the budget allocation for the active employment policies fell between 2013 and 2017. **The Committee requests the Government to continue providing up-to-date information on the measures adopted or envisaged to achieve the objectives of the Convention and, in particular, on how these have helped the beneficiaries obtain full, productive and sustainable employment. The Committee also requests the**

Government to provide updated statistical information on the development of the labour market, particularly on the rates of the economically active population, employment and unemployment, disaggregated by sex and age.

Youth employment. In response to the Committee's previous comments, the Government indicates that, according to data from the Economically Active Population Survey, the unemployment rate for the 16–24 age group decreased from 48.3 per cent in 2015 to 44.4 per cent in 2016. In 2016, the rate of young persons under 25 years without employment and not studying dropped 1.2 percentage points compared with 2015. The Committee notes the information provided by the Government in its report in relation to the measures taken within the framework of the Strategy for Entrepreneurship and Youth Employment 2013–16 and the national Youth Guarantee system with a view to promoting and supporting the integration of young persons into the labour market. In this regard, the Government refers to the adoption of Royal Decree Law No. 6/2016, of 23 December 2016, on urgent measures to boost the national Youth Guarantee system, which introduced significant changes to increase young persons' registration and access to the system. For example, jobseekers are automatically registered in the system by simply registering or renewing their status in a public employment service if the requirements are met, with retroactive effect on the date of such registration or renewal. In addition, in 2015 the maximum age of beneficiaries was extended, on an exceptional basis, up to 29 years, while the youth unemployment rate among 25–29 year-olds continues at above 20 per cent. The Government adds that, as a result of such measures, the number of users registered in the system rose from 36,678 young persons in March 2015 to 815,077 in August 2017. However, the UGT states in its observations that the number of young persons active in the labour market has fallen due to discouragement, and emigration among young persons has increased owing to the lack of opportunities for quality employment. In its reply, the Government states that the youth unemployment rate has fallen by 15 points in the past three years and that permanent recruitment of young persons has increased by 30 per cent compared with 2011. The UGT, however, states that it was neither consulted nor informed about the measures adopted within the framework of the Youth Guarantee plan. In response, the Government indicates that, following the adoption of Royal Decree Law No. 6/2016, the workers' organizations formed part of the executive committee for the follow-up and evaluation of the national Youth Guarantee system, in which they participated, on 13 December 2016 and 22 June 2017, in the analysis and assessment of activities carried out. The Government adds that the information on the actions performed within the framework of the Youth Guarantee plan is also reproduced in the annual reports presented to the Employment Committee of the European Commission. **The Committee requests the Government, in its next report, to provide an evaluation, carried out in consultation with the social partners, of the employment measures to ascertain the specific results achieved through the Strategy for Entrepreneurship and Youth Employment and the Youth Guarantee system, in particular for young persons with few qualifications.**

Long-term unemployed. In response to the Committee's previous comments, the Government refers in its report to the implementation of various measures aimed at increasing the employment rate of the long-term unemployed, such as extending the implementation period of the extraordinary Programme for Employment Activation until 28 April 2018 and of the Employment Retraining Programme (PREPARA) until the unemployment rate is under 18 per cent. The Government reports that the Joint Action Programme for the Long-term Unemployed was adopted on 18 April 2016 at the Sectoral Conference for Employment and Labour Affairs, which provides for individual attention and close monitoring of the actions carried out with the long-term unemployed to help them to find work. The programme's first objective is to assist around 1 million long-term unemployed in the first three years, giving priority to those between 30 and 54 years of age. The Committee notes that the UGT states that contributions from the workers' organizations were not taken into consideration in the development of the new programme and that they are not aware of its impact. The Government points to the extension of the extraordinary Programme for Employment Activation and the PREPARA, as well as the adoption of the Joint Action Programme for the Long-term Unemployed, indicating that both have been subject to dialogue and consensus with the social partners. Lastly, the UGT emphasizes that the rate of long-term and very long-term unemployment remains steady and that in the first half of 2017, 54.4 per cent of unemployed persons had been looking for work for over a year and 40 per cent for over two years. **The Committee requests the Government, with the participation of the social partners, to provide an evaluation of the measures taken to facilitate the return to the labour market of the long-term and very long-term unemployed.**

Education and vocational training programmes. In response to the Committee's previous comments, the Government has provided information in its report on the measures adopted to improve the level of qualifications and coordinate training and education policies with potential employment opportunities, and the outcome of those. To that end, the Government refers to the adoption of Act No. 30/2015, of 9 September 2015, which regulates the vocational training system for employment in the world of work. The strategic objectives of this Act include: ensuring the exercise of the right to training of the most vulnerable workers, whether employed or unemployed; effective contribution of training to the competitiveness of enterprises; efficiency and transparency in the management of public resources; and strengthening of collective bargaining concerning the alignment of training options with the demands of the production system. The Government indicates that in 2015 the National Qualification Strategy was developed in cooperation with the Organization for Economic Cooperation and Development (OECD), which highlights the main challenges for Spain with regard to training, such as early school drop-out, the high number of jobseekers without basic qualifications, and the mismatch between skill demand and supply. The Government also refers to the phased application of the Organic Act on the Improvement of the Quality of Education (LOMCE), aimed at dealing with those challenges. The Government adds that the rate of early school drop-out has decreased, falling in the first quarter of 2017 to 18.99 per cent and that the percentage of young persons between 20 and 29 years of age with a low level of education stands at 31.7 per cent, the lowest in the past decade. However, the employment rate of recent university graduates continues to be one of the lowest in Europe owing, inter alia, to the poor relationship between businesses and universities, which does not allow for university degrees to be matched with business demands. The Committee notes that the UGT emphasizes the absence of dialogue and bargaining in the education field, particularly, in relation with the LOMCE, the implementation of which is frozen. The UGT also states that the mismatch between skill supply and demand persists. The CEOE maintains that the reform of the vocational training system for employment in the labour sphere was rolled out with objections from the social partners and their role is limited in the new model. **The Committee requests the Government to continue sending information on the measures adopted or envisaged, in cooperation with the social partners, to improve the level of qualifications and coordinate education and training policies with potential employment opportunities.**

Article 3. Consultation with the social partners. In its previous comments, the Committee requested the Government to indicate the manner in which the social partners participated in the formulation, implementation and evaluation of employment policies to continue to overcome the negative impact of the crisis in the labour market. The Government indicates that the observations of the employers' organizations, the CEOE and the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME), and the workers' organizations (the CCOO and UGT), were taken into account in the development of the 2017 PNR. Furthermore, the Government indicates that a new framework for active labour market policies, the Spanish Strategy for Employment Activation 2017–20 is currently being designed, which will be based on a broad dialogue with the regions, social partners and all interested parties. The Government adds that the social partners are regularly informed and share their views on matters related to employment within the tripartite consultative bodies established for that purpose at the level of the State, autonomous entities and local authorities. The UGT and CCOO maintain that the social partners are not consulted prior to the adoption, implementation and evaluation of the employment policies. The CCOO adds that, while social dialogue forums on employment have been set up and it participates in various bodies involved in policy decision-making, the social partners have a narrow margin of influence over those policies as their proposals are not taken into consideration. In response, the Government reiterates that social dialogue was permanently in place during an intense period of reform in which it has always tried to seek agreement with the social partners. The UGT, on the other hand, emphasizes the non-compliance with the regulations concerning the holding and periodicity of the meetings of the General Council of the National Employment System and the General Council of the State Employment Public Service. The CEOE indicates that the social partners cannot make observations before the PNR has been developed and request that they more actively participate in its design, application and evaluation. **The Committee requests the Government to continue sending detailed information on the manner in which the social partners participate in the design, implementation and evaluation of the employment policies.**

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

Observation 2017

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 11 and 17 August 2017, respectively. The Committee also notes the Government's replies to the previous observations of the CCOO and the UGT, included in its report.

Articles 2 and 5 of the Convention. Effective tripartite consultations. The Committee notes the detailed information provided in the Government's report regarding the consultations carried out with the social partners between 2014 and 2017. With regard to the previous observations of the trade union organizations, the Government indicates that, between 2014 and 2016, the reports on ratified Conventions were sent to the social partners at the same time as they were provided to the ILO. The Government indicates that, on occasions, the reports were not sent first to the social partners, owing to the high number of reports to be drafted and their complex preparation, which entails requesting reports from various ministries. However, it states that it will undertake, as far as possible, to send the reports to the social partners before they are sent to the ILO so that their observations can be incorporated into the corresponding report and that the Government can respond to them. In this context, the UGT indicates in its observations that this year, the Government sent the reports on the ratified Conventions to the social partners on 7 July 2017. The UGT appreciates this change in the Government's approach. Additionally, the UGT and CCOO maintain that the procedure of written consultation is inadequate to guarantee the effective consultation with the social partners required under the Convention. The UGT therefore refers to the need to study the possibility of applying a new consultation procedure, through either a committee specifically in charge of matters relating to ILO activities or a body with general competence in the economic, social or labour fields. The CCOO indicates that no consultations were held with the social partners on the implementation or functioning of the procedures envisaged in the Convention. In its reply, the Government refers to the establishment of the Economic and Social Council in 1991, a governmental consultative body dealing with socio-economic and labour issues, attached to the Ministry of Employment and Social Security. The Government adds that the tripartite consultations were held in a way deemed appropriate, through written communication, and that the social partners did not request that meetings should be held on matters related to the reports. The Committee recalls that in Paragraph 2(3) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), the possible ways for member States to carry out the consultations required by the Convention are listed. Under the terms of the Recommendation, the consultations should not be undertaken through written communications except "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient" (see 2000 General Survey on tripartite consultation, paragraph 71). **The Committee requests the Government to continue providing up-to-date information on the content and outcome of the tripartite consultations held on all matters related to international labour standards covered by the Convention. The Committee also requests the Government to indicate how it takes into account the opinions expressed by the representative workers' organizations on the functioning of effective prior consultative procedures required under the Convention, as well as the possibility of establishing amended procedures in response to the concerns expressed by the trade union organizations in their observations.**

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

Observation 2017

The Committee notes the observations made by the Swedish Confederation for Professional Employees (TCO), the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Associations (SACO), received on 21 September 2016.

Article 2(3) of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time. The Committee notes with **interest** the information provided by the Government concerning amendments to the Employment Protection Act (EPA), which came into force on 1 May 2016. The amendments introduced additional safeguards against recourse to employment contracts for a specified period of time. Pursuant to the 2016 amendments, the employment contract of a worker employed under successive fixed-term contracts for a period of more than two years over a five-year period will be converted into a contract for an indefinite period of time. This rule applies not only to general fixed-term employment contracts, but also to successive contracts of employment to replace another worker, as well as to contracts for seasonal employment. The Government adds that the EPA's provisions on conversion of fixed-term contracts to contracts of indefinite duration do not apply to workers aged 67 and over. The Committee notes that under the amendments to the EPA, workers on fixed-term contracts are entitled to request written information from the employer relevant to facilitate a determination of whether the employee is entitled to conversion of his or her fixed-term contract into a contract of indefinite duration. **The Committee requests the Government to provide detailed information on the application in practice of the 2016 amendments to the Employment Protection Act establishing additional safeguards against abusive recourse to contracts of employment for a specified period of time, including information on the number of workers benefitting from these measures.**

Article 5(c). Invalid reasons for termination. The Committee notes with **interest** the information provided by the Government concerning the adoption of the Act on special protection for workers against reprisals for whistleblowing regarding serious irregularities, which entered into force on 1 January 2017. The Government indicates that, while workers with permanent contracts already enjoy considerable protection against unjustified dismissal, the Act extends protection against reprisals to employees engaged as temporary agency workers who denounce serious irregularities in the activities of the company that hires them. The Act entitles workers who have been subjected by their employer to reprisals for whistleblowing to lodge a claim against the employer for damages. Where the whistleblowing is in-house (relating to the company where the worker is engaged), it is sufficient for specific suspicions of irregularities to exist for protections against reprisals to apply. Where the whistleblowing is external (where the information is supplied for public disclosure or to a public authority), the worker is required to have good reason for making the allegations. The protection that the Act offers against reprisals does not apply where a worker has committed a crime by whistleblowing. **The Committee requests the Government to provide information on the reasons for the differentiated standard of protection against reprisals – including dismissals – for internal as opposed to external whistleblowers under the 2017 Act on special protection for workers against reprisals for whistleblowing regarding serious irregularities. The Committee further requests information on the number of complaints of unfair dismissal for whistleblowing, the applicable burden of proof, and extracts of relevant judicial decisions.**

Article 12. Severance allowance and other income protection. The Committee notes the adoption of amendments to the Unemployment Insurance Act, which entered into force on 1 September 2013. The Government indicates that the amendments extend the general conditions for entitlement to unemployment insurance fund benefits (section 9), and that the eligibility period in the case of a worker suspended from employment due to improper conduct, has been reduced from 60 to 45 days (section 43(b)(2)). **The Committee requests the Government to provide information on the manner in which the amendments to the Unemployment Insurance Act are applied in practice.**

Application of the Convention in practice. The Committee notes the Government's indication that, according to the Act Concerning Certain Measures to Promote Employment, employers are required to notify the Employment Service (*Arbetsförmedlingen*) if the employer needs to implement reductions in activities that involve at least five employees in the county. In this regard, the Government indicates that, in the first half of 2016, the Employment Service received a total 19,509 notices of termination of employment, covering 10,083 workplaces. The Government further indicates that, between July 2011 and April 2016, the Equality Ombudsman received 500 reports concerning termination of employment. **The Committee requests the Government to continue providing detailed information on the manner in which the provisions of the Convention are applied in practice, including extracts of judicial decisions involving questions of principle relevant to the Convention, available statistics on the activities of the Labour Courts and of the Discrimination Ombudsman, as well as on the number of terminations for economic or similar reasons.**

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

Observation 2017

Article 10(3) of the Convention. Part-time work. In its previous comments, the Committee referred to observations received from the Swedish Confederation for Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO) criticizing the reform of 2008, which reduced the entitlement to unemployment benefits for unemployed persons who agreed to work part time, to 75 days, while continuing to grant fully unemployed persons 300 days of benefits. The Committee asked the Government to reconsider the reform in the light of the social rationale of the Convention and its objective to promote employment, including part-time, by means of social security benefits. The Committee notes that the Government indicates that it is aware of the importance of providing support for part-time workers who seek full-time employment in this respect. The Committee notes with **satisfaction**, from the 50th annual report on the application by Sweden of the European Code of Social Security, that, from 15 May 2017, the provisions about part-time work have been changed: a person who performs or declares part-time work will, from this date on, be paid unemployment benefit for a total maximum of 60 weeks in a benefit period.

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

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

Observation 2017

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments initially made in 2015.

Legislative developments. The Committee notes the adoption of the new Law on Equal Opportunities for Women and Men, 2012. In accordance with article 2, this Law aims to establish equal opportunities and equal treatment for men and women in various fields, including the economic, social and education fields and in the public and private sectors. Articles 7 and 8 provide for the adoption of temporary special measures to overcome an existing structural gender inequality, including through positive and promotional measures. **The Committee requests the Government to provide information on the concrete measures taken for the general implementation of this Law and its impact on the achievement of gender equality in both the public and the private sectors. It also requests the Government to provide information on any special measures taken under articles 7 and 8 to achieve equality in employment and occupation and any special protective measures in favour of certain categories of persons.**

Sexual harassment. The Committee also notes that article 3(3) of the new Law expressly prohibits sexual harassment in the public and private sectors, and that sexual harassment is defined, in article 4(7), as being any type of unwanted behaviour of a sexual nature creating an intimidating or hostile atmosphere. **The Committee requests the Government to confirm that the law covers both quid pro quo and hostile environment sexual harassment at work. It also requests the Government to provide information on the practical measures taken to prevent and address sexual harassment in employment and occupation. The Government is also requested to provide information on any instances of sexual harassment addressed by the competent authorities, including any relevant administrative or judicial decisions and the sanctions imposed.**

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)

Observation 2017

Articles 3(a), 5 and 7(1) of the Convention. Trafficking in children, monitoring mechanisms and penalties. The Committee notes the Government's information in its report that, section 12 of the Law on Child Protection (amended in 2013) prohibits the sale and trafficking of children, in addition to the relevant provisions in the Criminal Code. The Committee also notes the Government's information that, in 2014, 18 perpetrators were accused and convicted of child trafficking, while in 2015, six perpetrators were accused and convicted.

The Committee also notes the Government's indication that a training for representatives of professional services on the prevention of human trafficking was conducted by the Public Institutions of Social Protection for Children at Risk, involving 14 employees in four institutions. Moreover, another training was conducted for police officers and social workers with 75 participants, focusing on the identification and referral of potential victims of human trafficking. In addition, a training has also been provided to foster families for ten caregivers regarding direct assistance and protection of child trafficking victims. The Committee also notes that the National Commission for Combating Human Trafficking keeps a database on all types of exploitation of victims of human trafficking. In 2015, three victims of human trafficking subjected to sexual and labour exploitation were identified, of which two were children. **The Committee requests the Government to pursue its efforts to combat trafficking in children, and to continue to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard. It also requests the Government to pursue its efforts to ensure that victims of child trafficking are provided with appropriate protection and services. Lastly, the Committee encourages the Government to continue its efforts to strengthen the capacity of the mechanisms in place to ensure the effective monitoring and identification of child victims of trafficking.**

Article 3(c). Use, procuring or offering a child for illicit activities, in particular the production and trafficking of drugs. The Committee previously noted that the Law on the Protection of Children did not penalize adults who use children for the illegal production and trafficking of drugs. The Committee noted the Government's statement that the relevant governmental institutions were taking the necessary measures to protect children from misuse and other types of abuse with respect to the illicit production and trade of drugs. It requested the Government to take the necessary measures to ensure that the use of a child for illicit activities, particularly the production and trafficking of drugs, is prohibited.

The Committee notes with **satisfaction** that section 12 of the Law on the Protection of Children, which was amended in 2015, prohibits any illicit activities and the use of child labour for the production and trafficking of drugs, and psychotropic substances. **The Committee requests the Government to provide information on the application in practice of section 12 of the Law on the Protection of Children, including the number and nature of infringements, investigations, prosecutions, convictions and sanctions applied.**

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Children in street situations. The Committee previously noted that, according to data from the Ministry of Labour and Social Policy (MLSP), there were approximately 1,000 children in street situations in the country, 95 per cent of whom were Roma, and that labour exploitation and begging contributed to this phenomenon. The Committee further noted the Government's information on the measures adopted to protect children in street situations, including the expansion of the network of daily centres for street children. The Government also indicated that, in 2012, a national SOS helpline was created in order to receive calls from citizens who want to report on children in street situations.

The Committee notes the Government's information that the problem of children in street situations is becoming more prevalent. The MLSP is responsible for taking measures to reduce the number of street children. To date, the MLSP has opened four day centres for street children in Skopje, Bitola and Prilep, as well as a 24-hour transit centre in Ohrid. Moreover, the MLSP financially supported a day care centre managed by a civil association in Shuto Orizari. The Committee further notes the Government's statement according to which it is often the parents who use their children to beg with them or make their children beg. Thus, the amendments to the Law on Family of 2014 provide that inducing a child to beg or using a child for begging shall be considered as abuse or severe neglect in the performance of parental duties, in which case the Centre of Social Work shall intervene. Depending on the situation, measures may include professional advice, constant supervision, temporary guardianship of the concerned child by the social work centre, and proceedings to withdraw parental rights or to file a criminal complaint before a competent court. **While taking due note of the measures taken by the Government, the Committee strongly encourages the Government to continue its efforts to protect children in street situations from the worst forms of child labour, and once again requests it to provide information on the number of children removed from the streets and who have benefited from rehabilitation and social integration measures.**

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

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

Observation 2017

The Committee notes the observations of the Turkish Confederation of Employers' Associations (TİSK) received on 8 August 2016.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. Law enforcement measures. The Committee previously noted the information from the International Trade Union Confederation (ITUC) that most of the trafficking cases occurring in the country related to prostitution of women from Eastern Europe and forced labour of persons from Central Asia. The Committee also noted the indication of TİSK that progress had been achieved with regard to bring traffickers to court and reducing the acquittal rate. The Committee also noted the Government's information regarding the application of section 227(3) of the Penal Code (prohibiting sending a person in or out of the country for the purpose of prostitution) that out of the 177 decisions handed down in 2011 and 2012, 23 persons were convicted. The Government also indicated that from the 166 cases concluded under section 80 of the Penal Code (on human trafficking) in 2011 and 2012, involving 912 suspects, 70 persons were sentenced to imprisonment. The Committee further noted that the UN Human Rights Committee expressed its concern that only a few cases of human trafficking had resulted in investigations, prosecution and sentences.

The Committee notes the statement in the communication of TİSK that the Government has ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2016. TİSK also indicates that Turkey has signed cooperation protocols in the field of combatting human trafficking with Belarus, Georgia, Kyrgyzstan, the Republic of Moldova and Ukraine.

The Committee notes the Government information in its report that under section 80 of the Penal Code, in 2013, out of 564 suspects involved in 126 adjudicated cases, 331 were acquitted; in 2014, out of 394 suspects involved in 91 adjudicated cases, 292 were acquitted; in 2015, out of 514 suspects involved in 119 adjudicated cases, 330 were acquitted; and in the first quarter of 2016, out of 148 suspects involved in 28 adjudicated cases, 118 were acquitted. The Committee further notes that, pursuant to section 227(3) of the Penal Code, in 2014, there were ten convictions out of 52 court decisions given; while in 2013, there were only three convictions out of 18 court decisions given. The Government also indicates that, the Turkish National Police (Directorate General of Security) and the General Command of Gendarmerie have both set up in their organizational structure a special department to "combat migrant smuggling and human trafficking", and that this subject is included in the training programs of their recruits and personnel. The Committee further notes that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) expresses its concern at the limited capacity and inter-institutional coordination of anti-trafficking efforts in its concluding observations of 31 May 2016 (CMW/C/TUR/CO/1, paragraph 83). The Committee notes with **concern** the low number of convictions regarding trafficking in persons, despite the significant number of cases brought to justice. **The Committee accordingly urges the Government to strengthen its efforts to ensure that all persons who engage in trafficking are subject to prosecution and that in practice, sufficiently effective and dissuasive penalties of imprisonment are imposed. The Committee further requests the Government to continue providing information on measures taken in this regard, including training and capacity building of law enforcement authorities, as well as on the results achieved. It also requests the Government to continue providing information on the number of prosecutions, convictions and specific penalties applied pursuant to sections 80 and 227(3) of the Penal Code.**

2. Protection and assistance for victims. The Committee previously noted the information from the ITUC that law enforcement officials make insufficient use of trafficking victim identification procedures and that many such victims are detained and deported. The ITUC also indicated that the Government does not operate any victim shelters and does not provide adequate resources to non governmental centres that offer assistance and services. The Committee also noted the statement in the communication of TİSK that the Government had adopted a victims-focused approach to addressing trafficking by taking legislative and administrative measures to combat this crime. TİSK indicated that shelters for human trafficking victims were operating in Ankara and Istanbul, as well as a hostel for this purpose in Antalya. In this regard, the Committee noted the Government's statement that the Ministry of Foreign Affairs had provided funding to these shelters for the period of 2014–16. The Government also stated that victims of human trafficking were provided with humanitarian visas for a period of six months. The safe and voluntary return of victims was ensured through cooperation between the police, the International Organization for Migration, liaison agencies in countries of origin and non-governmental organizations.

The Committee notes the statement in the communication of TİSK that joint operations are held in the framework of cooperation between the Ministry of Interior and countries that are source countries for human trafficking. TİSK also indicates that bilateral cooperation protocols have been signed by the Directorate General for Security in the Ministry of Interior with civil society organizations regarding the identification of victims and the follow-up process.

The Committee notes the Government's information that, victim identification procedures are systematized anew with the enactment of the Law on Foreigners and International Protection (No. 6458) 2013. Moreover, the Regulation of Combatting Human Trafficking and Protection of Victims was adopted in 2016, setting forth the procedures and principles for the prevention of human trafficking and protection of victims regardless of their nationality. Accordingly, foreign victims are provided with residence permits for a duration of six months, extendable up to three years, and those who wish to leave Turkey are repatriated to their country of origin or to a safe third country under the "Voluntary and Safe Return Programme". Victims are also provided supporting services through "Victim Support Programmes", including the provision of shelter homes or safe houses, health services, psychosocial help and legal assistance, among others. The Committee also notes that, a committee on the coordination of combatting human trafficking and affiliated provincial committees are monitoring mechanisms under the Regulation 2016. The Committee further notes that, 102 victims were identified from 1 January to 14 July 2016, while 108 were identified in 2015. Additional, 87 victims were sheltered from 1 January to 14 July 2016, and 69 were sheltered in 2015, either in special shelter houses of the Directorate-General of Migration Management for human trafficking victims, or in shelters located in provinces run by the Ministry of Family and Social Policies. **Noting the number of victims of trafficking identified in the country, and the various measures taken by the Government to protect them, the Committee welcomes the enactment of new laws in this regard, and requests the Government to provide information on their application in practice with regard to the identification of victims and the provision of protection and assistance to such victims, including the number of persons benefiting from related services.**

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

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

Observation 2017

The Committee notes the observations of Education International (EI) and the Education and Science Workers' Union of Turkey (EGİTİM SEN) and the Government's reply thereto, as well as those of the International Trade Union Confederation (ITUC) and the report of the Confederation of Progressive Trade Unions of Turkey (DİSK) attached to it, received on 1 September 2017 concerning issues examined by the Committee in its present observation and the Government's reply thereto. The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) transmitted by the International Organisation of Employers (IOE) received on 31 August 2017, the Government's reply thereto, and the observations of the TİSK, the Confederation of Turkish Trade Unions (TÜRK-İŞ), and Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) communicated with the Government's report and the Government's reply thereto. Finally the Committee notes the Government's detailed reply to the 2015 ITUC observations alleging violations of the Convention in practice.

Scope of the Convention. In its previous comments, the Committee had requested the Government to indicate the manner in which workers' organizations

representing prison staff may participate in negotiations of collective agreements covering their members. The Committee notes the Government's indication that prison staff like all other public servants are covered by the collective agreements concluded in the public service, even though under section 15 of the Act on Public Servants' Trade Unions and Collective Agreement (Act No. 4688) they do not enjoy the right to organize. **Recalling that all public servants not engaged in the administration of the State must enjoy the rights afforded by the Convention, the Committee requests the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them.**

Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination. Following up on the recommendations of the June 2013 Conference Committee on the Application of Standards, the Committee had requested the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors. The Committee notes with **interest** the Government's indication that within the framework of the "Improving social dialogue in working life" project that is being implemented with the technical support of the Office, it is planned to establish such a data system and to provide access to information with a view to ensuring protection against anti-union discrimination. The Committee also welcomes the Government's reply to the Confederation of Public Employers' Trade Unions (KESK) allegations of anti union discrimination in the appointment of the directors of institutes of education, pursuant to which after the Council of State ruled a stay of execution with regard to some of the provisions of the applicable regulations, new regulations were adopted to govern such appointments. **The Committee requests the Government to continue providing information on the progress made in the establishment of the system for collecting data on anti-union discrimination in private and public sectors and to provide the text of the Council of State ruling and the latest Regulation on the Assignment of the Administrators of Educational Institutions.**

Articles 1, 2 and 3. Massive dismissals in the public sector under the state of emergency decrees. The Committee notes the observations of EĞİTİM SEN and the DİSK alleging the anti-union dismissals of a great number of their members and officials under the emergency decrees issued following the coup attempt of July 2016, respectively in the education sector and the municipalities. The Committee further notes that both organizations consider that their members have been targeted for measures of suspension and dismissal because of their membership in unions affiliated to their confederations (KESK and DİSK), and that EĞİTİM SEN alleges that administrators of many public institutions reported false charges against their members and officials which led to their dismissal and suspension, with a view to weakening their union to the advantage of the so-called "partisan" unions. Accordingly, 1,959 DİSK Genel-İş members were allegedly dismissed from municipalities by decree or decisions of trustees who were appointed to replace deposed mayors, and 1,564 EĞİTİM-SEN members including three executive board members and 169 local board members were allegedly also dismissed since the state of emergency was declared. Both organizations observe that no means to challenge these decisions was afforded to the individuals concerned. The Committee also notes that the DİSK indicates that administrative courts and the Constitutional Court declared that they are not competent to examine the cases against dismissals ordered by emergency decrees, and that, while a "State of Emergency Practices Examination Commission" was established, in view of the large number of these cases, the special working group set up to examine them lacks sufficient resources. The Committee notes the Government's replies to the observations of the DİSK and EĞİTİM-SEN indicating that in the aftermath of the coup attempt of July 2016, the state of emergency was declared in accordance with the Constitution in order to eliminate the threat against the democratic order and the state of emergency decrees were issued to remove the members of the organizations linked to or affiliated with the Fethullahist Terrorist Organization/Parallel State Structure (FETO/PSS) from the state institutions. The Government refers in particular to section 4 of the Decree-Law No. 667 providing that all state officials who are considered to have affiliation, membership or connection to terrorist organizations and groups designated by the National Security Council as engaged in activities against the national security shall be dismissed from public service pursuant to judicial or disciplinary sanctions, as an extraordinary and final measure aiming to remove the existence of terrorist organizations and other structures considered as acting against national security. The Government indicates, however, that a Commission to Review the Actions Taken under the State of Emergency was established in order to examine and evaluate, inter alia, the applications of the individuals who were dismissed or discharged from their functions as well as from trade unions, federations and confederations dissolved directly through the state of emergency decrees. The term of duty of the Commission is two years, extendable for one more year. It has seven members and has the authority to obtain all the necessary documents and information from the relevant institutions subject to the condition of respect for the secrecy of the inquiry and State secrets. The Review Commission decides by majority vote. Applications must be lodged within 60 days as of a starting date fixed by the Government with regard to dismissals ordered in accordance with past decrees, and within 60 days as of the entry into force of future decrees ordering further dismissals. Annulment actions against the decisions of the Review Commission can be filed in Ankara Administrative Courts and will be determined by the High Board of Judges and Prosecutors. The Government further indicates that the members of the judiciary removed by the decisions of the high courts are given the right to file a case before the Council of the State.

The Committee wishes to emphasize that the protection against anti-union discrimination afforded to the workers by the Convention, the other ILO fundamental Conventions as well as other human rights instruments, remains valid in all political circumstances. In circumstances of extreme gravity, however, certain guarantees may be temporarily suspended on the conditions that any measures affecting the application of the Convention be limited in scope and duration to what is strictly necessary to deal with the situation in question. In this respect, the Committee notes with **deep concern** that the dismissals undertaken under emergency decrees took place without guaranteeing to the workers concerned the right to defend themselves, and that they amounted moreover to a deprivation of the right to access public office for the trade union members and officials concerned. While duly noting the seriousness of the situation following the coup attempt, the Committee considers that in view of the absence of minimal due process guarantees for the sanctioned persons and the ensuing deprivation of their right to access public office, the abovementioned decrees do manifestly not allow to guarantee that the dismissals of union members and officials have not been decided by reason of their trade union membership and that they do not constitute acts of anti-union discrimination under the Convention. The Committee notes that the Government has since established an ad hoc Commission which is competent to review the dismissals directly based on the state of emergency decrees and will have to deal with all cases in two or even three years, a period of time during which the dismissed trade unionists will remain deprived of their employment and of their right to access public office. The Committee notes with **concern** this situation as well as the allegations that, taking advantage of the absence of procedural means to challenge the dismissals under the state of emergency decrees, certain administrators reported false charges against the trade unionists to provoke their dismissal and to favour other unions. The Committee wishes to emphasize that such practices, if proved, would constitute acts of interference in violation of Article 2 of the Convention and cannot be justified by the invocation of state of emergency. **While duly noting that Turkey was in a state of acute national crisis following the coup attempt, in view of the above, the Committee urges the Government to ensure that the ad hoc Commission established to review the dismissals is accessible to all the dismissed trade union members who desire its review, and that it is endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee further requests the Government to ensure that the dismissed unionists do not bear alone the burden of proving that the dismissals were of an anti-union nature, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was based on other serious grounds. In case it is established that the dismissal of trade unionists has been based on anti-union motives, the Committee firmly expects that they be reinstated in their posts and compensated due to the deprivation of their wages, with maintenance of acquired rights. In view of the renewal of the state of emergency for the fifth time on 16 October 2017, the Committee further requests the Government to take the necessary measures to ensure that, in this context, no workers will be dismissed by reason of union membership or because of participation in union activities. The Committee further urges the Government to take the necessary measures to prevent and remedy any eventual abuse of the state of emergency to interfere in trade union activities and functioning and to provide information on the measures taken in this regard. The Committee requests the Government to provide detailed information in this respect.**

Article 4. Promotion of collective bargaining. Cross-sector bargaining. In its previous comment, the Committee had requested the Government to review the

impact of section 34 of the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) which provided that a collective work agreement may cover one or more than one workplace in the same branch of activity and to consider its amendment so as to ensure that it does not restrict the possibility for the parties to engage in cross-sector regional or national agreements. The Committee notes the Government's indication that the existing multi-level system of collective bargaining allowing for workplace level, enterprise level and group level collective agreements as well as framework agreements at the branch level is a product of a long and well-established industrial relations system in Turkey and that it does not seem that social partners feel a need for change in this regard. The Committee further notes the observation of the TİSK in this regard indicating that during the drafting and adoption phases of Act No. 6356, the social partners reached a consensus on maintaining the existing system that has been in place for almost 30 years and that there is no limitation as to the legality of cross-sector agreements in the Turkish law, as is illustrated by the fact that for years the main provisions of the collective agreements concerning public enterprises have been determined by a framework protocol concluded at the cross-sector level. **Taking due note of the information provided by the Government and the TİSK, the Committee requests the Government to indicate whether cross-sector bargaining through regional or national agreements is possible in the private sector under the current legal framework.**

Requirements for becoming a bargaining agent. The Committee notes that section 41(1) of Act No. 6356 initially set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. The Committee notes that the Committee on Freedom of Association has referred to it the legislative aspects of Case No. 3021 (see 382nd Report, June 2017, paragraphs 140–145) concerning the impact of the application of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole. The Committee notes that the Government recalls that the 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additional section 1 of Act No. 6356 stipulating that the 1 per cent membership threshold should be applied as 3 per cent with regard to trade unions that are not members of confederations participating in the Economic and Social Council, was repealed by the Constitutional Court. Therefore the 1 per cent branch threshold applies to all trade unions. The Committee further welcomes the Government's indication that Act No. 6745 renewed the exceptions established by Act No. 6645 for three categories of previously authorized trade unions, dispensing them from the branch threshold requirement, and that ten trade unions benefit from these changes until 6 September 2018. According to the statistics provided in the Government report the rate of unionization in the private sector was 11.96 per cent in January 2016, 11.50 per cent in July 2016, 12.18 per cent in January 2017 and 11.95 per cent in July 2017. Coverage of collective agreements fell from 10.81 per cent in 2014 to 9.21 per cent in 2015. **Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold and noting that the exemption granted to the previously authorized unions is provisional, the Committee requests the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the coverage of the national collective bargaining machinery, take the necessary measures to revise the law with a view to its removal.**

In its 2013 comments, the Committee had noted section 42(3) of Act No. 6356 which provides that if it is determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information is notified to the party which made the application for the determination of competence; and section 45(1) which stipulates that an agreement concluded without an authorization document is null and void. The Committee had recalled in this respect that if no union meets the required threshold, collective bargaining rights should be granted to all unions, at least on behalf of their own members. The Committee notes the observation of TURK-İS indicating that the 50 per cent workplace threshold is difficult to reach in a context where flexible labour systems are proliferating and supported by the legislation. With regard to the enterprise threshold, the Committee notes TURK-İS's indication that in cases where none of the trade unions organizing the workers in the same enterprise represents 40 per cent of the workers, or otherwise in the exceptional cases when two unions reach that same threshold, no union will be considered competent as a collective bargaining agent. The Committee once again recalls that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all the unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. Likewise, the Committee considers that when more than one union reaches the enterprise threshold, they should be able to engage in voluntary collective bargaining, at least on behalf of their own members. **In the light of the above, the Committee requests the Government to take the necessary measures to amend the legislation, in consultation with the social partners, and to provide information in this respect.**

In its previous comment, the Committee had requested the Government to provide information on any use of sections 46(2), 47(2), 49(1), 51(1), 60(1) and (4), 61(3) and 63(3) that provide for a variety of situations in which the certificate of competence to bargain may be withdrawn by the authorities and to continue to review their application with the social partners concerned with a view to their eventual amendment, favouring collective bargaining where the parties so desire. The Committee notes the TİSK observation according to which in practice these provisions have no negative effect on the collective bargaining process as unions are very careful about the procedural rules. The Committee further notes that the Government reiterates in its report that these provisions are intended to guarantee, speed up and shorten the bargaining procedure. **Taking due note of the information provided, the Committee requests the Government to provide information on the dialogue concerning the application of these provisions with the social partners concerned and on any use of these provisions.**

Settlement of labour disputes. As regards mediation, the Committee notes the Government's indication that the power of the competent authority to appoint a mediator in case the parties cannot agree on one was intended to prevent the parties from interrupting the collective bargaining process by obstructing the appointment of a mediator and that there is no request from social partners to change or repeal the mediation system. The Committee takes due note of this information.

Articles 4 and 6. Collective bargaining in the public service. Material scope of collective bargaining. The Committee notes the observations of the Türkiye Kamu-Sen on collective bargaining in the public service under Act No. 4688 as amended in 2012 and the Government reply thereto as well as the 2015 observations of the KESK regarding the same subject matter. The Committee notes that Türkiye Kamu-Sen and KESK underline that section 28 of Act No. 4688 restricts the scope of collective agreements to "social and financial rights" only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions. The Committee notes that the Government indicates in this regard that the 2012 amendments of section 28 were meant to give collective bargaining a significantly wider role in determining the economic and social rights of public servants. The Government adds, however, that when the bargaining parties agree to a need for legislative change, it is necessary to proceed accordingly, since the status of public servants is regulated by law. The Committee recalls that public servants that are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. The Committee wishes to further recall however, that the Convention is compatible with systems requiring parliamentary approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, as long as the authorities respect the agreement adopted. **Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee requests the Government to take the necessary measures to remove restrictions on matters subject to collective bargaining so that issues which are included in conditions of employment are not excluded from the scope of collective bargaining in the public service.**

With regard to the legal framework set in Act No. 4688, as amended in 2012, and its application, the Committee notes the observations of KESK and Türkiye Kamu-Sen that describe a completely centralized collective bargaining system. The Committee notes that pursuant to section 29 of Act No. 4688, Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are the parties to the Collective Agreements concluded in the public service. The

proposals for the general section of the Collective Agreement are prepared by the confederation members of the PSUD and the proposals for collective agreements in each service branch are made by the relevant branch trade union representative member of the PSUD. The Committee notes the observation of Türkiye Kamu-Sen in this regard, indicating that many of the proposals of authorized unions in the branch are accepted as proposals relating to the general section of the agreement meaning that they should be presented by a confederation pursuant to the provisions of section 29. According to Türkiye Kamu-Sen, this mechanism deprives the branch unions from the capacity to directly exercise their right to make proposals.

The Committee further notes that negotiations on general and branch specific issues take place simultaneously and in a single process during one month. In this regard the Committee notes Türkiye Kamu-Sen's observation that the fact that branch-specific matters are evaluated in the same process as the matters concerning all public servants in a very short time puts collective bargaining under pressure. It further notes the KESK's observation that the general and branch specific agreements should be concluded separately. The Committee takes note of the Government's reply to KAMU-SEN's observation that bargaining proposals for service branches are discussed in the technical committees established for each branch separately, that these committees' works are conducted independently from each other and the conclusion of an agreement in one branch does not mean that others are under an obligation to conclude an agreement too. The Committee further notes that pursuant to section 29, at the end of the bargaining process, a single collective agreement comprising a general section and branch-specific sections is signed by the chair of the PED (the Minister of Labour) on behalf of public administration. On behalf of public employees, the chair of the PSUD (representing the confederation that has the majority of members in the public service, currently MEMUR-SEN) signs the general part and the related trade union representatives sign the branch-specific parts. In case of failure of negotiations, the same authorities that are entitled to sign the collective agreement can apply to the Public Employees' Arbitration Board. The Board decisions will be final and will have the same effect and force as the collective agreement. The Committee notes that Türkiye Kamu Sen and KESK both object to the fact that although the top three confederations with the most members participate in collective bargaining, only the representative of the majority confederation is entitled to sign the collective agreement and apply to the Arbitration Board. The Committee further notes the KESK's observation that the majority of the Public Employee Arbitration Board are designated by the employers and the Council of Ministers which creates doubts about the independence of this body.

The Committee considers that where joint bodies within which collective agreements must be concluded are set up, and the conditions imposed by law for participation in these bodies are such as to prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of the Convention are impaired. In this respect, the Committee notes that although the most representative unions in the branch are represented in the PSUD and take part in bargaining within branch-specific technical committees, their role within the PSUD is restricted in that they are not entitled to make proposals for collective agreements, in particular where their demands are qualified as general or related to more than one service branch. **The Committee requests the Government to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State.**

The Committee further notes the KESK's observation pursuant to which in the local administration services branch, negotiations between the direct employer (local administration) and the unions representing public servants were conducted for a long time prior to the 2012 amendments and had resulted in the conclusion of numerous collective agreements from which tens of thousands of workers were benefiting, while as a result of the application of amended section 32 of Act No. 4688 the so-called "social equilibrium compensation" agreements are not considered as collective agreements anymore. The Committee takes note of the Government's indication in this regard that under Act No. 4688, the procedure for concluding a collective agreement for the local administration branch of service is the same as for the other branches, and a collective agreement for this branch should be concluded between the PED and the majority trade union in the branch. The Committee notes in particular the Government observation that if the social equilibrium compensation agreements were considered to be a "collective agreement" it would mean that two collective agreements would be concluded for the same public servants for the same period, which is not possible. The Committee notes that while in practice direct bargaining between the employer and the workers' unions existed previously in the local administration branch, the Government considers that the amended Act No. 4688 excludes the continuation of that practice. **Recalling that for a number of years it had requested the Government to ensure that the direct employer participates in genuine negotiations with trade unions representing public servants not engaged in the administration of the State, the Committee requests the Government to indicate whether all matters dealt with previously in direct bargaining between the local administration and organizations representing the employees can still be covered through the centralized bargaining system established under the amended legislation; and whether and how the organizations representing employees of local administrations are able to take part in the negotiations under the new system.**

In addition, the Committee requests the Government to reply to the KESK's observation concerning the independence of the Public Employees' Arbitration Board in view of the fact that the majority of its members are designated by the employers and the Council of Ministers.

The Committee finally requests the Government to provide, as a matter of urgency, the information requested with respect to the massive dismissals in the public sector examined above.

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

Observation 2017

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the report of the Confederation of Progressive Trade Unions of Turkey (DİSK) attached to it, received on 1 September 2017 concerning issues examined by the Committee in its present observation, and the Government's reply thereto. The Committee also notes the observations of the Turkish Confederation of Employers' Associations (TİSK) and the International Organisation of Employers (IOE) received on 31 August 2017, as well as the observations of the Confederation of Public Servants' Trade Unions (MEMUR SEN) and the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) communicated with the Government's report. The Committee takes due note of the detailed reply of the Government to the 2016 observations of the KESK and TÜRK-İŞ, and the observations of TÜRK-İŞ communicated with the Government's report.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee takes note of the discussion that took place at the Conference Committee on the Application of Standards, in June 2017, concerning the application of the Convention by Turkey. It takes note in particular of the conclusions of the Conference Committee in which it called upon the Government to ensure that workers' representatives in the undertaking are protected from prejudicial acts including dismissal and arrest, based on their status or activities as a workers' representative in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements, in particular during emergency situations, to respond to the allegations of the trade unions concerning the dismissal, arrest and discrimination against workers' representatives following the proclamation of the state of emergency, and to provide detailed information in response to these conclusions to the Committee of Experts at its next meeting in November 2017.

Article 1 of the Convention. Massive dismissals of public servants. The Committee notes that in the course of the discussion at the Conference Committee, the Worker members referred to the dismissal and ban from public service of more than 100,000 employees under emergency decrees. They indicated that trade union officials in public institutions were systematically targeted by allegations leading to their suspension and dismissal; that the grounds for dismissal

were always general, alleging membership, connection to, or communication with a terrorist organization, without any individualized justification and evidence being provided or any opportunity given to the concerned persons to defend themselves. The Committee further notes the observations of the Türkiye Kamu-Sen, indicating that a total of 48 representatives and 37 directors of its affiliate unions were dismissed under the state of emergency decrees.

The Committee notes the Government's indication that the state of emergency was declared by the Council of Ministers and approved by Parliament on 21 July 2016 following the coup attempt of 15 July. The Government refers to the obligation of loyalty of public servants and indicates that the dismissal and suspension of the public servants deemed to be linked with terrorist organizations and structures, entities or groups operating against the national security, is conducted in accordance with the law and the decrees with the force of law. The Government emphasizes that as the coup attempt posed a serious and actual threat to the democratic constitutional order and the national security, it was necessary to take extraordinary measures to eliminate the threat as a matter of urgency. With regard to the review mechanisms available to the dismissed public servants, the Committee notes the Government's indication that the State of Emergency Actions Review Commission was set up pursuant to Decree No. 685 dated 2 January 2017, to review the state of emergency decisions. This Commission will review the dismissals of the public servants who claim they are dismissed unfairly by a decree with the force of law. Those dismissed before 17 July 2017 – the date on which the Commission started taking applications – could apply until 14 September, and public servants dismissed after 17 July will have 60 days as of their dismissal date to apply. The decisions of the Commission are open to judicial review in competent administrative courts in Ankara and the last resort will be the European Court of Human Rights. The Government further adds that the public servants who were dismissed by an administrative decision of the public institutions or organizations have the right to apply to the administrative courts. The Committee notes the Government's indication that there have been 35,000 cases where dismissal decisions were revised or suspension orders lifted as a result of ongoing investigations, but notes that it is not indicated which review mechanisms have been used. The Committee further notes the indications in the reports of the DISK and Amnesty International, transmitted by the ITUC, with regard to the capacity and resources of the Review Commission. In particular it notes the indication that the Commission has seven members and a two-year mandate, and that, in order to process the caseload in that time limit, it will have to take hundreds of decisions per day.

The Committee notes that a great number of workers in the public sector, including an unknown number of trade union representatives, were dismissed on the basis of emergency decrees issued in July, August and September 2016. While some of these public servants were dismissed or suspended by administrative decisions, which were subject to review in the administrative courts, many others were dismissed directly as a result of the publication of their names in lists annexed to the state of emergency decrees. The dismissals of the latter group were not reviewable in courts and no review mechanisms existed in their regard until an ad hoc Review Commission was established and started receiving applications as of July 2017. The Committee recalls that *Article 1* of the Convention requires the effective protection of workers' representatives against dismissals based on their activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. The Committee further recalls that Paragraph 6 of the Workers' Representatives Recommendation, 1971 (No. 143), enumerates measures that can be taken to ensure such an effective protection, including a special recourse procedure open to workers' representatives who consider that their employment has been unjustifiably terminated, and effective remedies in respect of unjustified dismissals. The Committee recalls that there is no provision in the Convention allowing the invocation of a state of emergency to justify exemption from the obligations arising under it, and that the occurrence of circumstances such as an attempted coup does not justify the violation of the right of workers' representatives to enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities. In circumstances of extreme gravity, however, certain guarantees may be temporarily suspended on the condition that any measures affecting the application of the Convention be limited in scope and duration to what is strictly necessary to deal with the situation in question. Once the acute emergency has subsided, measures taken under the state of emergency should be immediately lifted. The Committee notes that the dismissed public servants, including trade union representatives, were definitively banned from public service, and that those who were dismissed as a result of the inclusion of their names in the lists annexed to decrees, did not initially have access to any means of defence or review mechanism. While noting that the situation in Turkey after the coup attempt was one of acute national crisis, the Committee considers that in view of the absence of minimal due process guarantees for the sanctioned workers' representatives and the ensuing deprivation of their right to access public office, the abovementioned decrees do manifestly not allow to guarantee, as provided for in the Convention, that the dismissals of workers' representatives have not been decided by reason of their status or activities as a workers' representative or on union membership or participation in union activities. The Committee notes that the Government has since established an ad hoc Commission which is competent to review the dismissals directly based on the state of emergency decrees and will have to deal with all cases in two or even three years, a period of time during which the dismissed trade unionists will remain deprived of their employment and of their right to access public office. While the Committee notes that the sensitive character of certain public service functions, such as the intelligence services and the armed forces, can justify more drastic measures as a matter of urgency, it considers that, with regard to other branches of public service, measures should be taken to ensure the minimal guarantees of due process. ***While duly noting that Turkey was in a state of acute national crisis following the coup attempt, in view of the renewal of the state of emergency for the fifth time on 16 October 2017, the Committee requests the Government to ensure that workers' representatives are not dismissed on the basis of their status or activities as a workers' representative or of their union membership or participation in union activities, in so far as they act in conformity with existing laws. In case of existence of grounds to believe that a workers' representative has been involved in illegal activities, the Committee requests the Government to ensure that all guarantees of due process are fully afforded. The Committee further requests the Government to provide statistical information on the number of union representatives affected by the dismissals and suspensions based on emergency decrees.***

As regards the Review Commission, the Committee notes with **concern** that it will have to deal with a very significant caseload in two years, which is a relatively short period of time. ***Recalling that compliance with Article 1 of the Convention requires that workers' representatives who consider that their employment has been unjustifiably terminated have access to effective recourse procedures, the Committee requests the Government to ensure that the Review Commission is accessible to all dismissed workers' representatives who desire its review, and that it is endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee further requests the Government to ensure that the dismissed workers' representatives do not bear alone the burden of proving that the dismissals were discriminatory, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was justified based on other grounds. Finally, the Committee requests the Government to provide statistical information on the number of applications lodged and processed in the Review Commission and administrative courts by affected workers' representatives and to indicate the outcome of those procedures.***

Arrest of trade union representatives. The Committee notes the allegations of arrest of trade union representatives both before and after the coup attempt in the statement of Worker members before the Conference Committee, as well as in the latest observations of the ITUC. The Committee observes that these allegations pertain more closely to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and will examine them in its comments on the application of this Convention in 2018.

[The Government is asked to reply in full to the present comments in 2019.]

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

Observation 2017

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. The Committee previously noted the indication of the

Confederation of Turkish Trade Unions (TÜRK-İŞ) that child labour in Turkey was found in the urban informal sector, in the domestic service, and in seasonal agricultural work. The Committee also noted that a child labour force survey, which was conducted by the Turkish Statistical Institute in 2012, revealed an increase in the number of children aged 6 to 14 years who are in child labour, and indicated that 2.5 per cent of children between 6 and 14 years of age were found to be engaged in work. The Committee requested that the Government continue to provide statistical information on the number of children under the minimum age engaged in child labour.

The Committee notes the absence of new statistical information in this regard. However, the Committee notes the Government's information in its report that the Time Bound National Policy and Programme Framework for Prevention of Child Labour (2005–15) has ended, and that the Government is working to update it for the second phase. For this purpose, a working group has been created with the participation of related institutions and organizations to update the document and prepare an additional plan of action, and the abovementioned documents were expected to be published in October 2016. The Committee also notes that, the Ministry of Education adopted the Circular No. 2016/5 "Access of Children of Seasonal Agriculture Workers and of Nomadic and Semi-Nomadic Families to Education" in March 2016, according to which follow-up teams are established to find children who could not continue their education and enrol them in school. While taking note of the measures undertaken by the Government, the Committee notes with **concern** the number of children below the minimum age of 15 years engaged in child labour. **The Committee therefore urges the Government to strengthen its efforts to ensure the elimination of child labour. The Committee also requests that the Government indicate whether the updated Time-Bound National Policy and Programme Framework for Prevention of Child Labour and its action plan have been adopted and published, and provide information on the application of the Circular No. 2016/5 in practice.**

Article 8. Artistic performances. The Committee previously noted the Government's statement that in 2012, drafts were developed for the amendment of the Labour Law Act regarding the employment of children below the minimum age in artistic performances, with the contribution of the Trade Union of Performers, the Radio and Television Supreme Counsel, and other relevant institutions and organizations, but that no progress had yet been recorded. The Committee therefore expressed its firm hope that the amendments would be made in conformity with the Convention.

The Committee notes with **satisfaction** that section 71 of the Labour Law was amended by Act No. 6645 of 4 April 2015. According to this amendment, children under 14 years of age may work in art, cultural and advertising activities, without harming their physical, mental, social and moral development or interfering with the continuation of education. Moreover, a written agreement and a separate permit are required for each activity. Section 71 further provides that concerned children shall not work more than five hours per day and 30 hours per week; while for the preschool children and those attending school, the working hours cannot be more than two hours per day and ten hours per week, and must be outside school hours. The Committee also notes that issues regarding the work permit, working and resting hours, working environment and conditions, principles and procedures of payment, and other related issues for children working in these activities, will be determined by age groups and types of activity, for which an implementing regulation will be issued by the Ministry of Labour and Social Security. Moreover, a system is planned regarding the granting of work permits and the tracking of concerned children. **The Committee therefore requests that the Government provide information on any progress made regarding the adoption of the implementing regulation and the establishment of the monitoring system.**

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

Observation 2017

The Committee notes the observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ), communicated with the Government's report. In its observations, TÜRK-İŞ indicates that the Tripartite Consultative Board does not meet regularly, despite the Tripartite Consultative Board Directive providing that the Board shall meet three times per year and may also hold additional extraordinary meetings, as needed. Moreover, TÜRK-İŞ maintains that the manner in which the representatives of workers' organizations are selected to the Board is not in compliance with *Article 1 of the Convention*, as those selected must be the "most representative organisations of employers and workers enjoying the right of freedom of association", whereas section 4 of the Regulations of the Board provides for the selection of the top three worker confederations with the most members. **The Committee requests the Government to provide its comments in this respect.**

Article 5(1). Effective tripartite consultations. The Government indicates in its report that social dialogue in Turkey includes all types of negotiation, consultation and exchanges of information between representatives of government, employers and workers on issues of common interest relating to economic and social policy. It reiterates its previous comments that the Economic and Social Council, the Labour Assembly and the Tripartite Consultative Board are the most important social dialogue mechanisms in Turkey for purposes of the Convention. The Committee notes the information provided by the Government on the meetings held by these three tripartite bodies during the reporting period. In addition, it notes that, in 2014, a fourth tripartite body, the Committee of National Employment Strategy, started meeting twice per year, in June and December. With respect to consultations on matters relating to international labour standards covered by the Convention, more specifically in connection with the re examination of unratified Conventions (*Article 5(1)(c)*), the Government indicates that the Turkish Employment Agency (İŞKUR) considers Turkish legislation to be in line with the provisions of the Private Employment Agencies Convention, 1997 (No. 181), but has indicated that this issue must be negotiated with the social partners. In this context, the Government refers to national legislation establishing temporary business relationships through private employment agencies, Act No. 6715, which entered into force in May 2016. With respect to tripartite discussions on other matters relating to international labour standards under *Article 5(1)* of the Convention, the Committee refers to its previous comments, in which it noted the observations of workers' organizations, in which the Confederation of Public Employees' Trade Unions indicated that the Government had made no effort to consult the social partners on the application of ILO Conventions. **The Committee therefore requests the Government to provide more detailed information on the specific content and outcome of tripartite consultations held on each of the matters related to international labour standards set out in Article 5(1) of the Convention, including on the re examination of unratified Conventions (Article 5(1)(c)) and on questions arising out of reports to be made under article 22 of the ILO Constitution (Article 5(1)(d)). The Committee also refers to its comments made in 2015 on the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and invites the Government to continue to provide information on the consultations held with the social partners concerning the possible ratification of the Private Employment Agencies Convention, 1997 (No. 181), which would involve the immediate denunciation of Convention No. 96.**

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

Observation 2017

The Committee notes the observation of the Turkish Confederation of Employers' Associations (TİSK) received on 28 October 2016.

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, according to the indications of the International Trade Union Confederation (ITUC), Turkey is a country of transit and destination for trafficked children, who are forced into prostitution and debt bondage. The Committee noted the Government's information that there were between 50–90 child victims of trafficking in 2010. Sixteen perpetrators responsible for trafficking involving victims under 18 years of age were found guilty and

convicted in 2009, and five in 2010. The Committee also noted the Government's statement that between 1 June 2011 and 31 January 2013, 97 foreign nationals were identified as victims of human trafficking, but none were children. The Government also indicated that it was taking measures to combat trafficking within the framework of the Second National Action Plan to Combat Trafficking.

The Committee takes due note of the Government's information in its report that the Regulation to Combat Human Trafficking and to Protect Victims entered into force on 17 March 2016. According to this Regulation, victims shall be deemed as children at least until the examination to ascertain their status as a child is concluded. Moreover, psychologists or social workers shall be present during the interview with child victims in the identification process. Identified child victims are handled by the relevant units of the Ministry of Family and Social Policies. The Regulations also provide for access to education services, as well as a voluntary and safe return programme. The Committee also notes the Government's information that, from 2014 to the first quarter of 2016, 740 out of 1,056 suspects involved in 238 adjudicated cases related to trafficking in persons were acquitted. **The Committee therefore urges the Government to take the necessary measures to ensure that those responsible for the trafficking of children under 18 years of age are prosecuted, and that sufficiently effective and dissuasive penalties are applied in practice, and asks the Government to provide statistical information on the number of prosecutions initiated, convictions, and penalties imposed. It also requests the Government to continue its efforts to provide the necessary and appropriate direct assistance to child victims of trafficking, including their rehabilitation and social integration, and to provide information on the results achieved.**

Articles 3(d) and 4(1). Hazardous work and excluded categories of work. The Committee previously noted that under section 4 of the Labour Act, several categories of workers are excluded from its scope of application, including workers in businesses with fewer than 50 employees in the agricultural and forestry sector, construction work related to agriculture within the framework of the family economy, and domestic service. The Committee also noted that the Regulation on Principles and Procedures on Employment of Children and Young Persons issued in 2013 (Child Employment Regulation 2013) specified the occupations in which children are allowed to be employed, including ten types of light work, 27 types of work permitted for young persons between the ages of 15 and 18, and an additional 11 types of work permitted for children between the ages of 16 and 18. The Committee further noted the adoption of the Occupational Health and Safety Law (OSH law), which applies to all workers, including those excluded from the Labour Act. Section 10 of the OSH Law provides that, when conducting a risk assessment of a workplace, the situation of young workers shall be considered.

The Committee notes the Government's information that the Child Employment Regulation 2013 was enacted on the basis of section 71 of the Labour Law, and that consequently, it is not applicable to work that is not covered by the Labour Law. The Government also indicates that the OSH Law contains certain exceptions regarding its scope of application, including domestic service and self-employed work. The Committee further notes the Government's indication that the domestic service where children and young persons can be employed is covered by the Code of Obligations No. 6098, of which section 417(2) provides for employers' obligation to ensure occupational health and safety at the workplace, and prohibits psychological and sexual abuse. The Committee also notes, from the observation of the TISK submitted under the Minimum Age Convention, 1973 (No. 138), that according to the Child Labour Survey 2012, the number of children employed in industry dropped considerably, but that there was a sharp increase in the number of those employed in agriculture and services. The Committee recalls from the General Survey of 2012 on the fundamental Conventions (paragraphs 549–557), that children working in certain sectors of the economy, in particular those working in the informal economy, and the domestic and agricultural sectors, constitute high-risk groups who are usually outside the normal reach of labour controls and vulnerable to hazardous working conditions. The Committee reminds the Government that the Convention applies to all children under 18 years of age, without exceptions. **The Committee therefore urges the Government to take the necessary measures to ensure that all children under 18 years of age are protected from hazardous work, including those working outside a labour relationship or out of the normal reach of labour controls. The Committee requests the Government to provide information on any measures undertaken and the results achieved in this regard.**

Articles 5 and 7(2). Monitoring mechanisms and effective and time-bound measures. Children working in seasonal hazelnut agriculture. The Committee previously noted the statement of the Confederation of Turkish Trade Unions (TÜRK-İŞ) that children were involved in hazelnut harvesting in very poor conditions. The Committee also noted the Government's statement that children working in agriculture were one of the target groups of the Time-Bound Programme for the Prevention of Child Labour and that it was implementing an action plan to keep children out of plantations in nut growing provinces. The Committee further noted the Government's collaboration with ILO-IPEC on a project to reduce child labour in seasonal commercial agriculture in hazelnut production in Ordu.

The Committee notes the TISK's information that the Ministry of Education issued the Circular "Access to education for the children of seasonal agricultural workers, migrants and semi-migrant families" in 2016, which provides for concrete measures regarding the provision of education to the children of migrant workers and semi-migrant families engaged in seasonal agricultural work, in order to protect them from child labour.

The Committee notes the Government's information that the Pilot Project on the Prevention of the Worst Forms of Child Labour in Seasonal Hazelnut Agriculture, in collaboration with the ILO, has been extended to 2018, additionally covering Akcakoca and Chilimli in Duzce Province and Hendek in Sakarya province. Another Pilot Project on "Testing United States Department of Agriculture's Application Proposals in Hazelnut Supply in Turkey" is carried out in cooperation with the Ministry of Labour and Social Security (MLSS) and the ILO, among other stakeholders. This Project will be implemented in 1,000 hazelnut fields in the provinces of Ordu, Sakarya and Duzce for 28 months, aiming to prevent child labour in the supply chain. However, the Committee notes the Government's indication that no labour inspection activities covering seasonal agricultural work, in particular the activity of hazelnut picking, was carried out during 2013–16. Referring to the 2012 General Survey (paragraph 556), the Committee recalls the necessity to ensure effective law enforcement, including through the strengthening of labour inspection, where there are children engaged in hazardous work in agriculture. **The Committee therefore requests the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate in agriculture. The Committee also requests the Government to continue its efforts, through the implementation of effective and time-bound measures, to ensure that children under 18 years of age are not engaged in hazardous work in the agricultural sector, particularly in seasonal agricultural work and the nut harvest, and to provide information on the results achieved.**

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. Syrian refugee children. The Committee notes, from UNICEF's press release of 19 January 2017, that Turkey hosts the largest number of child refugees worldwide, among which over 40 per cent (380,000) are Syrian refugee children missing out on education. The Committee also notes that, according to the Evaluation Report of UNHCR's Emergency Response to the Influx of Syrian Refugees in Turkey for the period going from January 2014 to June 2015 (Evaluation Report, ES/2016/03), partly due to lack of access to education, one of the most serious protection problems facing Syrian refugee children is child labour. While acknowledging the difficult situation prevailing in the country, the Committee expresses its **concern** at the large number of Syrian refugee children who are deprived of education. **Considering that education is one of the most effective methods of preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take the necessary measures to facilitate access to free, quality basic education to Syrian refugee children.**

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

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

Observation 2017

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

The Committee notes the observations made by the Federation of Trade Unions of Ukraine (FPU) received on 9 August 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the 2017 conclusions of the Committee on the Application of Standards (CAS) on the application of Conventions Nos 81 and 129 by Ukraine.

Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129. Restrictions and limitations on labour inspection. The Committee previously noted with deep concern the moratorium introduced between January and June 2015 on labour inspections. In this respect, the Committee recalls that the CAS noted that this moratorium had expired, and called upon the Government to refrain from imposing any such restrictions on labour inspection in the future.

The Committee notes that no further moratorium on labour inspection has been adopted. However, it notes with **concern** that Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity (which applies to a number of inspection bodies, including the labour inspection services), and Ministerial Decree No. 295 of 26 April 2017 on the procedure for state control and state supervision of compliance with labour legislation (applying section 259 of the Labour Code and section 34 of the law on self-governing bodies) provide for several restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877), the frequency of labour inspections (section 5(1) of Act No. 877), and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295).

In this context, the Committee also notes that the FPU indicates that in July 2017, Parliament passed, on its first reading, Bill No. 6489 on amendments to certain laws concerning the prevention of excessive pressure on businesses due to state supervision of compliance with labour and employment legislation, which makes the conduct of unscheduled inspection visits an administrative offence. **In order to ensure that no such restrictions are applied, the Committee urges the Government to take the necessary measures so that Act No. 877 of 1 January 2017 and Ministerial Decree No. 295 of 26 April 2017 are brought into conformity with Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129 and to ensure that no additional restrictions are adopted. The Committee also reminds the Government that it can continue to avail itself of ILO technical assistance for this purpose.**

Articles 4, 6, 7 and 11 of Convention No. 81 and Articles 7, 8, 9 and 15 of Convention No. 129. Organization of the labour inspection system under the supervision and control of a central authority. Partial decentralization of labour inspection functions. The Committee notes that pursuant to Decree No. 295 of 27 April 2017, applying section 259 of the Labour Code and section 34 of the Local Government Act, labour inspection functions are now assumed by both the State Labour Service (SLS) and the local authorities (executive bodies of councils in regional urban centres and in integrated rural and semi-rural territorial communities). The Committee notes that the Government indicates that the local government authorities come under the supervision of the SLS with respect to labour inspection functions, in terms of the guidance, information and training provided by the SLS to the local authorities concerning labour inspection. Moreover, the Government indicates that the SLS may revoke the appointment of "authorized officials" in the local authorities as labour inspectors if these officials systematically fail to duly exercise their verification powers. The Government also refers to efforts to ensure coordination to avoid duplication, for example through the establishment of a joint register on the inspections undertaken by the SLS and the local authorities. In this respect, the Committee notes that section 5 of the procedure for state supervision (adopted by Decree No. 295) provides that labour inspections by the local authorities are conducted pursuant to the annual work plan of the SLS.

The Committee recalls that *Article 4* of Convention No. 81 provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. The Committee recalls in this respect that it indicated in its General Survey of 2006 on labour inspection, that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140 and 152). In addition, the Committee recalls the importance of ensuring that organizational changes are carried out in conformity with the provisions of the Conventions, including *Articles 4, 6, 7 and 11* of Convention No. 81 and *Articles 7, 8, 9 and 15* of Convention No. 129. **The Committee therefore requests the Government to provide detailed information on the allocation of adequate budgetary resources to enable the effective performance of labour inspection duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129). Relatedly, noting the guidance and training provided by the SLS to the local authorities, the Committee requests the Government to provide specific information on how the supervision by the SLS of the local authorities is ensured on a regular basis. The Committee also requests the Government to indicate how it is ensured that the "authorized officials" working as labour inspectors under the supervision of the SLS and the local authorities have the status and conditions of service guaranteeing their independence from any undue external influence (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). Moreover, it requests the Government to indicate how it is ensured that "authorized officials" working as labour inspectors have the adequate qualifications and training for the effective performance of inspection duties (Article 7 of Convention No. 81 and Article 9 of Convention No. 129). In line with the 2017 requests of the CAS, the Committee requests the Government to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.**

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Material means and human resources to achieve an adequate coverage of workplaces by labour inspection. The Committee previously noted from the 2015 needs assessment undertaken by the ILO following the request for technical assistance by the Government that increasing the number of labour inspectors and material resources (including transport facilities, registers and appropriate software) was essential for enhancing the number and quality of inspections. The Committee notes with **regret** that the Government has, once again, not provided information on any measures taken in this regard. It also notes from the information provided by the Government that there are currently 542 labour inspectors and 223 vacant labour inspection positions. **The Committee therefore once again requests that the Government provide information on the measures taken to improve the budgetary situation of the SLS, and improve the material means and human resources of the services throughout its structures. In this respect, the Committee requests the Government to continue to provide information on the number of labour inspectors working at the central and local levels of the SLS and their material resources (offices, office equipment and supplies, transport facilities and reimbursement of travel expenses), and to take measures to ensure that the number of inspectors and level of resources are appropriate for the effective performance of their duties.**

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

[The Government is asked to reply in full to the present comments in 2018.]

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

Observation 2017

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

The Committee notes the observations made by the Federation of Trade Unions of Ukraine (FPU) received on 9 August 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the 2017 conclusions of the Committee on the Application of Standards (CAS) on the application of Conventions Nos 81 and 129 by Ukraine.

Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129. Restrictions and limitations on labour inspection. The Committee previously noted with deep concern the moratorium introduced between January and June 2015 on labour inspections. In this respect, the Committee recalls that the CAS noted that this moratorium had expired, and called upon the Government to refrain from imposing any such restrictions on labour inspection in the future.

The Committee notes that no further moratorium on labour inspection has been adopted. However, it notes with **concern** that Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity (which applies to a number of inspection bodies, including the labour inspection services), and Ministerial Decree No. 295 of 26 April 2017 on the procedure for state control and state supervision of compliance with labour legislation (applying section 259 of the Labour Code and section 34 of the law on self-governing bodies) provide for several restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 5 of Decree No. 295 and section 5(4) of Act No. 877), the frequency of labour inspections (section 5(1) of Act No. 877), and the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295).

In this context, the Committee also notes that the FPU indicates that in July 2017, Parliament passed, on its first reading, Bill No. 6489 on amendments to certain laws concerning the prevention of excessive pressure on businesses due to state supervision of compliance with labour and employment legislation, which makes the conduct of unscheduled inspection visits an administrative offence. **In order to ensure that no such restrictions are applied, the Committee urges the Government to take the necessary measures so that Act No. 877 of 1 January 2017 and Ministerial Decree No. 295 of 26 April 2017 are brought into conformity with Articles 12(1)(a) and (b), 16 and 17 of Convention No. 81 and Articles 16(1)(a) and (b), 21 and 22 of Convention No. 129 and to ensure that no additional restrictions are adopted. The Committee also reminds the Government that it can continue to avail itself of ILO technical assistance for this purpose.**

Articles 4, 6, 7 and 11 of Convention No. 81 and Articles 7, 8, 9 and 15 of Convention No. 129. Organization of the labour inspection system under the supervision and control of a central authority. Partial decentralization of labour inspection functions. The Committee notes that pursuant to Decree No. 295 of 27 April 2017, applying section 259 of the Labour Code and section 34 of the Local Government Act, labour inspection functions are now assumed by both the State Labour Service (SLS) and the local authorities (executive bodies of councils in regional urban centres and in integrated rural and semi-rural territorial communities). The Committee notes that the Government indicates that the local government authorities come under the supervision of the SLS with respect to labour inspection functions, in terms of the guidance, information and training provided by the SLS to the local authorities concerning labour inspection. Moreover, the Government indicates that the SLS may revoke the appointment of "authorized officials" in the local authorities as labour inspectors if these officials systematically fail to duly exercise their verification powers. The Government also refers to efforts to ensure coordination to avoid duplication, for example through the establishment of a joint register on the inspections undertaken by the SLS and the local authorities. In this respect, the Committee notes that section 5 of the procedure for state supervision (adopted by Decree No. 295) provides that labour inspections by the local authorities are conducted pursuant to the annual work plan of the SLS.

The Committee recalls that *Article 4* of Convention No. 81 provides for the placing of the labour inspection system under the supervision and control of a central authority in so far as is compatible with the administrative practice of the Member. The Committee recalls in this respect that it indicated in its General Survey of 2006 on labour inspection, that should certain labour inspection responsibilities be attributed to different departments, the competent authority must take steps to ensure adequate budgetary resources and to encourage cooperation between these different departments (paragraphs 140 and 152). In addition, the Committee recalls the importance of ensuring that organizational changes are carried out in conformity with the provisions of the Conventions, including *Articles 4, 6, 7 and 11* of Convention No. 81 and *Articles 7, 8, 9 and 15* of Convention No. 129. **The Committee therefore requests the Government to provide detailed information on the allocation of adequate budgetary resources to enable the effective performance of labour inspection duties (Article 11 of Convention No. 81 and Article 15 of Convention No. 129). Relatedly, noting the guidance and training provided by the SLS to the local authorities, the Committee requests the Government to provide specific information on how the supervision by the SLS of the local authorities is ensured on a regular basis. The Committee also requests the Government to indicate how it is ensured that the "authorized officials" working as labour inspectors under the supervision of the SLS and the local authorities have the status and conditions of service guaranteeing their independence from any undue external influence (Article 6 of Convention No. 81 and Article 8 of Convention No. 129). Moreover, it requests the Government to indicate how it is ensured that "authorized officials" working as labour inspectors have the adequate qualifications and training for the effective performance of inspection duties (Article 7 of Convention No. 81 and Article 9 of Convention No. 129). In line with the 2017 requests of the CAS, the Committee requests the Government to ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.**

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Material means and human resources to achieve an adequate coverage of workplaces by labour inspection. The Committee previously noted from the 2015 needs assessment undertaken by the ILO following the request for technical assistance by the Government that increasing the number of labour inspectors and material resources (including transport facilities, registers and appropriate software) was essential for enhancing the number and quality of inspections. The Committee notes with **regret** that the Government has, once again, not provided information on any measures taken in this regard. It also notes from the information provided by the Government that there are currently 542 labour inspectors and 223 vacant labour inspection positions. **The Committee therefore once again requests that the Government provide information on the measures taken to improve the budgetary situation of the SLS, and improve the material means and human resources of the services throughout its structures. In this respect, the Committee requests the Government to continue to provide information on the number of labour inspectors working at the central and local levels of the SLS and their material resources (offices, office equipment and supplies, transport facilities and reimbursement of travel expenses), and to take measures to ensure that the number of inspectors and level of resources are appropriate for the effective performance of their duties.**

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

[The Government is asked to reply in full to the present comments in 2018.]

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

Observation 2017

The Committee notes the observations of the Trades Union Congress (TUC), received on 26 October 2017. With regard to tripartite consultations on direct ILO matters, the TUC indicates that on occasions where there has been a failure of proper consultation, this has been quickly remedied. It adds, however, that in recent years, in the wider workings of government, there has been a reduction in the number of public bodies upon which trade unions and the interest of working people are actively and properly represented. **The Committee requests the Government to provide its comments in this respect.**

Article 5 of the Convention. Effective tripartite consultations. The Committee notes that the Government is continuing to actively consider the ratification of the Work in Fishing Convention, 2007 (No. 188). The Government indicates that the small Tripartite Working Group (TWG) established in early 2014, was expanded later in that same year in order to provide better representation to industry and workers. It includes representatives of government, as well as organizations representing industry and those representing individual fishermen. The Government indicates that the TWG met 14 times and discussed all aspects of the Convention. The TWG is also involved in the development of a proposed legislative package which, subject to ministerial approval, will be made available for public consultation. The Committee also notes that following the round-table discussion held in 2014 on the possible ratification of the Domestic Workers Convention, 2011 (No. 189), no further action has been taken in this regard. It notes the Government's indication that it continues to seek proportionate improvements to the social and employment protections available to domestic workers where particular problems are identified. **The Committee requests the Government to continue to provide updated detailed information on the content and outcome of the tripartite consultations held on matters relating to international labour standards covered by the Convention, including with regard to the re-examination of unratified Conventions such as the Work in Fishing Convention, 2007 (No. 188).**