

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

*Observations 2019*

*Regional file by country -*

Europe



## C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

### Observation 2019

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

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.

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

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of trade union rights in practice. **The Committee requests the Government to provide its comments in this respect.**

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

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

nature.

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

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

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

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

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

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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of the Convention, in particular lack of adequate protection against anti-union discrimination and severe obstacles to collective bargaining. **The Committee requests the Government to provide its comments in this respect.**

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

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

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

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

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

### Observation 2019

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

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

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***Committee requests the Government to provide information on the application in practice of section 9 of the Labour Code, including on any activities carried out in order to raise awareness of workers, employers and their organizations, as well as of labour inspectors and judges on the new provisions of the Labour Code protecting workers from discrimination in employment and occupation.***

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

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

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

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

### Observation 2019

*Article 4 of the Convention. Bipartite negotiations.* The Committee recalls that in its previous comments, it had noted that the legislation made a distinction between a “collective agreement”, concluded at the enterprise level following bipartite negotiations between workers and employers, and a “collective accord”, concluded at industry, territorial or national levels following bipartite (between trade unions and the authorities) or tripartite (between trade unions, employers’ organizations and the authorities of the appropriate level) negotiations (section 36(1) of the Labour Code (1999)). In this respect, it had requested the Government to take measures, including of a legislative nature, in order to encourage and promote collective bargaining between trade unions and employers and their organizations. The Committee notes the Government’s indication that the participation of state bodies in the conclusion of collective accords meets the principle of tripartism, reflected in numerous ILO decisions and documents as well as in international labour standards. While understanding that the aim of the arrangement is to ensure that the obligations undertaken by all parties under collective accords signed following tripartite negotiations are respected, the Committee recalls that *Article 4* of the Convention is aimed at promoting free and voluntary bargaining between workers’ organizations and employers or employers’ organizations. It considers that the principle of tripartism, which is particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), should not replace the principle of autonomy of workers’ organizations and employers (or their organizations) in collective bargaining on conditions of employment. ***The Committee therefore once again invites the Government, in consultation with the social partners, to take appropriate measures, including of a legislative nature, in order to encourage and promote collective bargaining between trade unions and employers and their organizations, without involvement of public authorities. It requests the Government to provide information on the measures taken in this regard.***

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

### Observation 2019

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

The Committee notes the observations of the Belarusian Congress of Democratic Trade Unions (BKDP) and of the International Trade Union Confederation (ITUC), received on 31 August 2019 and 1 September 2019, respectively.

The Committee notes the 385th and the 390th reports of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

As a general point, the Committee notes that activities aimed at giving effect to the recommendations of the Commission of Inquiry continued in the country in collaboration with the ILO. In this respect, the Committee notes the Government's indication that a training course on international labour standards for judges, lawyers and legal educators that took place in Minsk in June 2017 allowed the participants to increase their knowledge of the practical application of international labour standards. The Committee further notes that a tripartite conference "Tripartism and Social Dialogue in the World of Work" was held in Minsk on 27 February 2019. The Committee recalls that it had previously noted that one of the outcomes of a tripartite activity on dispute resolution held in 2016 was the common understanding of the need to continue working together towards building a strong and efficient system of dispute resolution, which could handle labour disputes involving individual, collective and trade union matters. The Committee notes with **regret** the BKDP's indication that the work on developing such a mechanism has been neglected completely. **The Committee requests the Government to provide its comments thereon and invites it to continue to take advantage of ILO technical assistance in this regard.**

*Article 2 of the Convention. Right to establish workers' organizations.* The Committee recalls that in its previous observations, it had urged the Government to consider, within the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council), the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. The Committee notes the Government's indication that at present, the requirement to provide confirmation of legal address is not an obstacle to the registration of trade unions and that there were no cases of refusal to register trade unions or unions (associations) of trade unions in 2016, 2018 or the first half of 2019. The Government informs that in 2017, a registration of a union in Minsk was refused due to non-compliance with the procedure for establishing a trade union, and not due to the lack of legal address; the union did not appeal this decision in court. Furthermore, according to the Government, in the period from 2016 to the end of July 2019, there were ten cases of refusal to register trade union organizational structures: seven cases concerned organizational structures of trade unions affiliated to the Federation of Trade Unions of Belarus (FPB) and two cases concerned primary organizations of unions affiliated to the BKDP. Among the latter two, one case concerned a primary trade union of the Belarusian Independent Trade Union (BNP) of workers from a construction company (both the BKDP and the ITUC refer to this case in their observations). The Government indicates that following submission of all the documents required by law, the organization was registered pursuant to a decision of the Soligorsk District Executive Committee of 15 January 2019. Another case concerned a primary organization of the Belarusian Union of Radio and Electronics Workers (REP) and the refusal was due to a repeated failure to submit registration documents; the union did not appeal this decision in court. The Government points out that in this period, registration was granted to 3,779 trade union organizational structures. In short, the above ten cases show that decisions denying registration are rare: only one such case was due to the absence of a legal address and, according to the Government, even this decision was not appealed in court. The Government further indicates that once the identified shortcomings have been rectified, documents for state registration can be resubmitted. Thus, the Government concludes, a refusal to grant registration is not tantamount to prohibiting the establishment of a trade union. While noting this information, the Committee observes that the BKDP and the ITUC refer, in addition, to cases of refusal to register the Free Trade Union of Belarus (SPB) and REP-affiliated trade union structures in Orsha and Bobruisk. **The Committee requests the Government to provide its comments thereon.**

Regarding the Committee's request to discuss the issue of registration by the tripartite Council, the Committee notes the Government's indication that the agenda for meetings is set on the basis of proposals from the parties and organizations represented on the Council, taking into account the relevance of the issues raised, and with the agreement of the Council's members. To that end, the information should be submitted to the Council's secretariat (the Ministry of Labour and Social Protection) with an explanation as to why that particular issue is problematic and merits consideration by the Council. The Government indicates that in 2016–19, there have been no submissions for discussion of issues relating to the legal address requirement. **The Committee requests the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings. The Committee requests the Government to inform it of the outcome of the discussion.**

*Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. Legislation.* The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 of 28 November 2003 on Receiving and Using Foreign Gratuitous Aid. The Committee further recalls that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee notes the Government's indication that Decree No. 24 has been superseded by Presidential Decree No. 5 of 31 August 2015 on Foreign Gratuitous Aid and the ensuing Regulations on the Procedures for the Receipt, Recording, Registration and Use of Foreign Gratuitous Aid, the Monitoring of its Receipt and Intended Use, and the Registration of Humanitarian Programmes. The Committee notes with **regret** that just as previously under Decree No. 24, the foreign gratuitous aid cannot be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of political and mass campaigning work among the population and that a single violation of the Regulation bears the sanction of possible liquidation of the organization.

Further in this connection, the Committee recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities. The Committee recalls that under the Law, which establishes a procedure for mass events, the application to hold an event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. In this context, "violation" includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date of the event. The Committee had requested the Government to amend the legislation, in particular by abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the Law and setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles.

The Committee notes the Government's indication that the Law on Mass Activities was amended on 26 January 2019. The Government indicates that the revised Act sets out a number of additional measures and requirements that need to be complied with by the organizers in order to ensure the law and order and public safety during mass events. The Committee notes with **deep regret** that the Law on Mass Activities was not amended along the lines of its previous requests. It also notes with **concern** the BKDP's allegation that the amendments to the Law were not discussed with the social partners. The Committee also notes the BKDP's indication that among the novelties in the Law is the notification procedure for street action, which applies to mass events to be organized at "permanent places" designated as such by local authorities. Thus, according to the BKDP, the format of an event is imposed on the organizers, as rallies and pickets are possible in the squares designated as "permanent places", but processions and demonstrations are not. **The Committee requests the Government to provide its comments thereon.**



The Committee notes with **regret** the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the Regulations on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49, which entered into force on 26 January 2019). The Committee notes that according to the Regulations, once a mass event is authorized, the organizer must conclude contracts with the relevant territory internal affairs bodies, health services facilities and cleaning facilities regarding, respectively, protection of public order, medical and cleaning services. The Regulations provide for the fees in relation to protection of public services as follows: three base units – for an event with the participation of up to ten people; 25 base units – for an event with the participation of 11 to 100 people; 150 base units – for an event with the participation of 101 to 1,000 people; 250 base units – for an event with the participation of more than 1,000 people. The Committee notes that according to the information provided by the BKDP, the current base unit is set at BYN25.5 (US\$12.5). If the event is to take place in an area which is not a “permanent designated area,” the above fees are to be multiplied by a coefficient of 1.5. In addition to the above fees, the Regulations provide for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event. According to the Regulation, these shall include: salary of employees engaged in the provision of services taking into account their category, number and time spent in the mass event; mandatory insurance contributions; the cost of supplies and materials, including medicine, medical products, detergents; indirect expenses of specialized bodies; taxes, fees, other obligatory payments to the republican and local budgets provided by law.

Reading these recent provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events (the Regulation adopted pursuant to Decree No. 5), the Committee considers that the capacity for carrying out mass actions would appear to be extremely limited if not inexistent in practice. **The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the Regulation adopted pursuant to Decree No. 5 in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used. Furthermore, considering that the right to organize public meetings and demonstrations constitutes an important aspect of trade union rights, the Committee requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49, which makes the exercise of this right nearly impossible in practice. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.**

*Practice.* The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the BKDP, the BNP and the REP to hold demonstrations and public meetings. The Committee had urged the Government, in working together with the above-mentioned organizations, to investigate all of the alleged cases of refusals to authorize the holding of demonstrations and meetings, and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations and meetings to defend their occupational interests. The Committee had also requested the Government to reply to the BKDP allegations regarding a video posted on YouTube showing the activists of the Women's Network of the Independent Union of Miners (NPG) protesting by the entrance to the NPG office against the raising of the retirement age. The Committee recalls that according to the BKDP, participants were summoned to the Soligorsk police station and charged with a violation of the Administrative Code. On 17 May 2016, the court determined the protests recorded on the video to be an unauthorized picketing, found the participants guilty and imposed a penalty in the form of an administrative warning. Also in May 2016, the Polotsk Court found Mr Victor Stukov and Mr Nikolai Sharakh, trade union activists of the BNP union at a fiberglass enterprise, guilty of participating in unauthorized picketing and imposed fines amounting to €250 and €300, respectively. According to the BKDP, trade unionists were protesting in the city centre against violations of labour legislation at the enterprise and against Mr Sharakh's dismissal.

The Committee notes the Government's detailed comments on these cases. The Government points out that the above-mentioned activists were charged under the Administrative Code not for exercising their right to participate in peaceful protests to defend their professional interests, but for violating the legislation, i.e. for having organized and held events that had not been agreed upon with the local executive and administrative bodies. The Government further points out that decisions to deny an authorization for a mass event are taken in strict compliance with the law in force and on the basis of a careful analysis of the effect on public order and safety. In 2016–19, the following were the most common reasons to deny an authorization to hold a mass event: the application did not contain the information required by the law; another mass event was being held in the same place at the same time; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; and the event was announced in the mass media prior to receiving authorization. The Government indicates that when a permission to hold a mass event is not granted, the organizers, having rectified the shortcomings, may re-submit their application. Finally, a decision prohibiting the holding of a mass event may be appealed in court. The Government informs that the BKDP has been able to organize assemblies and demonstrations and refers in this respect to several examples where the permission to hold such events was granted. **While taking note of this information, the Committee notes the most recent BKDP's allegations that executive authorities in Minsk, Mogilev, Vitebsk, Zhlobin, Borisov, Gomel, Brest, Novopolotsk refused to grant a permission to hold mass events. The Committee requests the Government to provide its detailed comments thereon.**

The Committee notes the BKDP and the ITUC allegations regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty, in 2018, of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US\$22,500). The Committee notes that the particulars of these cases are being considered by the Committee on Freedom of Association in the framework of its examination of the measures taken by the Government to implement the recommendations of the Commission of Inquiry. In this connection, the Committee further notes the BKDP allegation that the equipment seized during searches in the REP and BNP premises have not been returned until now. **The Committee requests the Government to provide information regarding this allegation.**

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

While duly recognizing the efforts made by the Government, the Committee emphasizes that much remains to be done in order to implement in full all of the



Commission of Inquiry's recommendations. *It encourages the Government to pursue its efforts in this respect and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay. Noting the BKDP alleged lack of consultations in respect of the adoption of new pieces of legislation affecting rights and interest of workers, the Committee requests the Government to take the necessary measures in order to further strengthen the role of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which should, as its title indicates, play a role of a platform where consultations on the legislation affecting rights and interests of the social partners can take place. [The Government is asked to reply in full to the present comments in 2020.]*

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

### Observation 2019

Follow-up to the 2004 recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes of the observations of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 30 August 2019 and alleging violations of the Convention in practice. The Committee examines them below.

The Committee notes the 385th and the 390th reports of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

*Articles 1–3 of the Convention. Adequate protection against acts of anti-union discrimination and interference.* The Committee recalls that it had previously requested the Government to reply to the BKDP observations containing allegations of dismissals of trade unionists Ms Oksana Kernozhitskaya and Mr Mikhail Soshko. The Committee notes the Government's indication that these workers were not dismissed, rather, their contract of employment has expired. The Government explains that the termination of employment upon the expiry of a fixed-term employment contract cannot be considered dismissal by the employer. The Government further explains that under the law, the employer is not obliged to justify his or her unwillingness to extend an employment relationship upon the expiry of a contract. Thus, according to the Government, the expiry of a contract is already in itself sufficient grounds for its termination; there are no legal means of compelling an employer to conclude a new contract with a worker. The Committee considers that the legal framework as described by the Government does not currently provide for an adequate protection against non-renewal of a contract for anti-union reasons. It recalls in this respect that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of *Article 1* of the Convention. It also recalls that since inadequate safeguards against acts of anti-union discrimination, including against non-renewal of contracts for anti-union reasons, may lead to the actual disappearance of primary level trade unions, composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders and members of trade unions, against any such acts. As one of the additional measures to ensure the effective protection against anti-union discrimination, the adoption of provision for laying upon the employer, in the case of any alleged discriminatory dismissal or non-renewal of contract, the burden of proving that such action was in fact justified. **The Committee requests the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.**

The Committee recalls that it had also noted the BKDP allegation that the management of the Belaruskali promoted the primary trade union affiliated to the Federation of Trade Unions of Belarus (FPB) at the expense of the BKDP-affiliated union and pressured the members of the latter to leave the union. The Committee notes the Government's explanation that primary organizations of trade unions in Belarus are affiliated to either the FPB or the BKDP. A number of enterprises have several primary trade union organizations. At Belaruskali, there are two primary trade union organizations: the primary organization of the Belarusian Union of Chemical, Mining and Oil Industries Workers (Belkhimprofsoyuz), affiliated to the FPB, and the Independent Trade Union of Miners (NPG) of Belaruskali, which is a primary organization of the Belarusian Independent Trade Union (BNP), affiliated to the BKDP. The presence in one enterprise of the organizational structures of two different trade unions naturally gives rise to competition for members. The trade unions use various methods and means to strengthen their own position, retain existing members and attract new ones. As provisions of Belkhimprofsoyuz' by-laws do not permit simultaneous membership in two trade unions, the trade union committee of the Belkhimprofsoyuz primary trade union organization at the undertaking decided to bring its structure into line with the existing rules and to take steps to eliminate dual trade union membership. To that end, it proposed to workers with dual membership (690 workers) to choose between the two unions. According to the Government, an overwhelming majority of workers decided in favour of Belkhimprofsoyuz primary trade union organization; as a result, the BNP-affiliated union membership fell down. Thus, the Government concludes that the sharp fall in membership of the primary trade union was mainly a consequence of the choice made by workers. The Government also indicates that retirement of workers as well as the termination of employment was also a factor in the decline of the union membership. The Government points out that the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council) received no information about specific instances of members of the BNP primary trade union organization being pressured by the enterprise management to leave the BKDP-affiliated trade union. Workers who believe that they have been subject to anti-union discrimination or pressure by may apply to a court for measures to end the discrimination.

The Committee notes the new allegations submitted by the BKDP regarding interference by enterprise managers in trade union affairs. According to the BKDP, enterprise managers, for the most part, are still members of the FPB. It alleges, in addition, that at most enterprises, employees, when hired, are first sent to the trade union committee, where they are urged to write an application for affiliation to the official trade union to get a job. A citizen is thus deprived of the right to freely choose a union and members of independent trade unions are forced to quit their union organizations. The BKDP refers, in particular, to the situation at the above-mentioned Belaruskali where the director general has joined the Belkhimprofsoyuz to become its official and head the anti-union campaign against the independent union. The BKDP alleges that as a result, between 1 January and 1 April 2019, 596 workers were forced to renounce their NPG membership. The BKDP further refers to a similar situation at the Remmontazhstroy company where the independent union lost 180 members within the same period. The BKDP further alleges threats of termination of contract suffered by Mr Drazhenko, the head of primary trade union at the Borisov "Autohydraulic booster" plant for his active trade union position. **The Committee requests the Government to provide its detailed comments on the above.**

The Committee had previously welcomed the Government's indication that a training course on international labour standards for judges, lawyers and legal educators was to take place with ILO support in 2017 and requested the Government to provide information on the outcome of this activity. The Committee notes the Government's indication that this course allowed judges, lawyers and legal educators to increase their knowledge of the practical application of international labour standards, which they are now applying in their professional work.

In this connection, the Committee recalls that it had also expected that the public authorities, in particular the Ministry of Justice, the Office of the Prosecutor-General and the judiciary, together with the social partners, as well as other stakeholders (for example, the Belarusian National Bar Association) would continue working together towards building a strong and efficient system of dispute resolution which could deal with labour disputes involving individual, collective and trade union matters. The Committee notes with *regret* the BKDP indication that the work on developing an effective mechanism for resolving non-judicial disputes which could deal with labour disputes, including individual, collective and trade union disputes, is neglected completely. **The Committee requests the Government to provide its comments thereon. The Committee invites the Government to continue to take advantage of ILO technical assistance in this regard.**

*Article 4. Right to collective bargaining.* The Committee had previously noted that a collective bargaining procedure at enterprises with more than one trade

union had been agreed upon and included in clause 45 of the General Agreement between the Government and the national organizations of employers and trade unions for 2016–18. Pursuant to this provision, a single body comprising representatives of all unions active at an enterprise would negotiate a collective agreement to which all trade unions could become a party. The Committee notes with **interest** that the same provision is now included in the General Agreement for 2019–2021 (clause 49).

The Committee recalls the BKDP allegation that this procedure was not respected by the management of a glass fibre company in Polotsk, an enterprise producing tractor parts in Bobruisk and a company producing tractors in Minsk. The Committee notes the Government's indication that as regard the first enterprise, the primary trade union of the Belarusian Free Trade Union (SPB) did not name any representatives for the inclusion in the collective bargaining committee. The Government points out that the collective agreement for 2014–17 applied to all of the enterprise's workers. On 28 January 2016, the enterprise received a written request for collective bargaining from the SPB primary organization. Pursuant to the legislation in force, it was requested to confirm that it had members at the enterprise and that it was authorized to represent their interests. As no such confirmation followed, the union could not initiate collective bargaining process. The Government indicates that the latest collective agreement was concluded for 2017–20 by representatives of the primary organization of Belkhimprofsoyuz. As regards Bobruisk plant, the Government indicates that a collective agreement was concluded on 26 March 2016 by the chairperson of the primary organization of the Belarusian Automobile and Agricultural Machinery Workers Union. Representatives of the SPB primary trade union did not participate in the work of the committee established for the purposes of collective bargaining, as the competence of this primary organization had not been confirmed in the proper manner. As regards the Minsk plant, the Government indicates that according to the enterprise management, neither the Belarusian Union of Radio and Electronics Workers (REP), nor the trade union group established by this union in February 2016, stated that they wished to join the collective agreement concluded at the enterprise for 2014–16, and no documents were provided confirming that it represented workers at the enterprise.

The Committee notes that the BKDP alleges several other instances where clause 45 of the previous General Agreement was not respected. In this connection, the Committee notes the Government's indication that taking into account the complaints received from the BKDP, the issue of compliance with the procedure for collective bargaining where more than one trade union exist, as specified in the General Agreement for 2016–18, has been examined a number of times within the framework of the tripartite Council. The tripartite Council drew the attention of all social partners to the need to comply with clause 45 of the General Agreement. Upon the proposal by the BKDP, this issue was once again examined on 6 March 2018. On that occasion, the tripartite Council requested both the employer and the worker members to provide assistance and to carry out work among its member associations to explain and clarify the issues arising from clause 45 of the General Agreement for 2016–18. The Council concluded that clause 45 applies exclusively to representatives of trade union organizations that are actually operating at an organization (enterprise) and that have members from among the workers of that organization (enterprise). ***The Committee trusts that any issues of compliance with the General Agreement will continue to be brought to the attention of the Council where they can be examined in the tripartite setting.***

The Committee notes the Government's indication that the tripartite Council operates effectively in Belarus and is the main forum for stakeholders to discuss issues relating to the implementation of the Commission of Inquiry's recommendations. The Council also decides on proposals of areas of collaboration with the ILO. The Government informs in this respect, that on the basis of such proposals, a meeting of the tripartite Council held with the participation of the ILO representatives in February 2019, discussed the issue of collective bargaining at various levels. It was agreed that the work in this respect would continue with the ILO support with the view to improving legislation and practice in this area. ***The Committee requests the Government to provide information on all developments in this regard.***

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

### Observation 2019

The Committee takes note of the Government's reply to the 2016 ITUC observations.

*Article 2 of the Convention. Scope of the Convention.* In its previous comment, on the basis of section 6 of the Labour Act of the Federation of Bosnia and Herzegovina, 2016 (the FBiH Labour Act), section 5 of the Labour Act of the Republika Srpska, 2016 (the RS Labour Act) and section 2(5) of the Labour Act of the Brčko District of Bosnia and Herzegovina, 2006 (the BD Labour Act), the Committee requested the Government to indicate whether specific categories of workers – workers without an employment contract, domestic workers, workers in the informal economy and self-employed workers – enjoy, in law and practice, the rights guaranteed by the Convention, and if not, to take the necessary measures to amend the relevant labour legislation in this regard. The Committee notes the Government's indication that: (i) in the Federation of Bosnia and Herzegovina, no measures have been taken in order to expand the right to organize to persons outside the definition of worker (natural person employed on the basis of an employment contract – section 6 of the FBiH Labour Act); and (ii) in Republika Srpska, the legislation makes a distinction between trade unions and all other types of formal or informal associations of workers or citizens: all persons having the status of workers under section 5 of the RS Labour Act can form trade unions, whereas the persons who do not have the status of a worker formally or legally can establish organizations, by virtue of the Act on Associations and Foundations of the Republika Srpska, 2001 (the RS Act on Associations and Foundations) with a view to improving their position and protecting their interests, thus exercising the rights guaranteed by the Convention. The Committee observes, however, that the RS Act on Associations and Foundations does not provide the same guarantees to workers in terms of the right to organize and associated rights, and that both in the Federation of Bosnia and Herzegovina and in the Republika Srpska, specific categories of workers are thus not covered by all the guarantees of the Convention. The Committee notes that no information has been provided in respect of this issue in the Brčko District. The Committee further understands from the information provided by the Government under this Convention and the Right of Association (Agriculture) Convention, 1921 (No. 11), that the distinction between employees, who benefit from the rights granted by the Convention, and other workers is also applicable to the agricultural sector. **Recalling that the right to organize should be guaranteed to all workers without distinction or discrimination of any kind, including to workers without an employment contract, domestic workers, agricultural workers, workers in the informal economy and self-employed workers, the Committee encourages the Government to revise the relevant legislation in the three entities to ensure that the above categories of workers enjoy, in law and in practice, all the rights guaranteed by the Convention.**

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 2019**

*Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes.* The Committee recalls that for a number of years it had been raising the need to amend section 47 of the Civil Servants Act (CSA), which restricted the right to strike of public servants. The Committee takes note with **satisfaction** that section 47 of the CSA has been amended to recognize the right to strike of civil servants. The Committee notes that the Government indicates that: (i) the right is applicable to all civil servants with the exception of managing senior civil servants, that is those holding the positions of Secretary-General, Municipal Secretary, Director General of the Directorate-General, Director of a Directorate and Head of Inspectorate; (ii) section 47 also provides that participation of civil servants in a legal strike is counted as official length of service, for the time during which they participate in a legal strike civil servants have a right to compensation, and it is explicitly prohibited to seek disciplinary action or liability for civil servants participating in a legal strike.

The Committee further recalls its comments concerning the need to amend section 11(2) of the Collective Labour Disputes Settlement Act (CLDSA), which provides that the decision to call a strike shall be taken by a simple majority of the workers in the enterprise or the unit concerned; and section 11(3), which requires the strike duration to be declared in advance. The Committee notes the Government's indication, on the requirement of support by a majority of the workers that: (i) the requirement is justified as it creates certainty that the objectives pursued by the strike are common for most of the workers and employees, and not just for a small part of them; (ii) the CLDSA provides for the possibility that the simple majority is taken only by the workers and employees in a particular division of the enterprise; (iii) the CLDSA does not explicitly specify the manner in which the decision to strike should be taken, so that it is not necessary to bring all workers and employees together in one place at the same time; and (iv) workers and employees who have expressed their consent to strike are not bound by the obligation to participate in it and it is not uncommon in practice for the number of those effectively striking to be smaller than the number of workers and employees who have given their consent to the strike. While noting these explanations from the Government, the Committee must recall again that requiring a decision by over half of all the workers involved in the enterprise or unit in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises, and that if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level (see the 2012 General Survey on the fundamental Conventions, paragraph 147). As to the requirement to indicate the duration of the strike, the Committee notes that the Government indicates that: (i) prior notice of the duration of the strike is aimed at determining the period during which the parties make efforts to settle the dispute definitively through direct negotiation, mediation or any other appropriate means, and that the requirement seeks to encourage the parties to make every effort possible to resolve the dispute; and (ii) the CLDSA does not restrict the right to strike, as it does not prohibit workers and employees from continuing their strike actions by making a decision to do so. In this respect, the Committee must recall once again that workers and their organizations should be able to call a strike for an indefinite period if they so wish without having to announce its duration. **The Committee requests the Government to provide information on any developments concerning sections 11(2) and 11(3) of the CLDSA, and to indicate what are the requirements for continuing a strike action beyond its initially determined duration, in particular whether a new vote and decision by the workers concerned must take place, or whether instead a decision by the trade union calling the strike is enough.**

In its previous comments, the Committee has also been raising the need to amend section 51 of the Railway Transport Act, which provides that, where industrial action is taken under the Act, the workers and employers must provide the population with satisfactory transport services corresponding to no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee welcomes the Government's indication that: (i) the Ministry of Labor and Social Policy recalled to the Ministry of Transport, Information Technologies and Communications (MTITC) the need for amendment of the aforementioned section 51 of the RTA in order to be in compliance with the Convention; (ii) the MTITC expressed readiness to take the necessary steps to amend the aforesaid section; and (iii) currently consultations are being held and the Ministry of Labour and Social Policy will continue to report on the progress made. The Committee recalls that the establishment of too broad a minimum service (like no less than 50 per cent) restricts one of the essential means of pressure available to workers to defend their economic and social interests, that workers' organizations should be able to participate in defining such a service, along with employers and the public authorities, and that in cases where agreement is not possible, the issue should be referred to an independent body. **The Committee requests the Government to provide information on any progress in this regard.**

**C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)****Observation 2019**

The Committee notes the Government's comments on previous observations of the International Trade Union Confederation (ITUC).

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* In its previous comments, the Committee had invited the Government to take the necessary steps to strengthen the sanctions and remedy measures available in cases of acts of anti-union discrimination and to provide specific information on the application of the relevant national legislation in practice. The Committee had requested the Government to: (i) provide statistics as to the average length of reinstatement proceedings; (ii) specify the number of reinstatement orders issued in cases of anti-union dismissal; and (iii) clarify whether a worker alleging anti-union dismissal may initiate proceedings both under the Labour Code (LC, sections 344 and 225) and the Protection against Discrimination Act (sections 71 and 78). The Committee notes that the Government states that: (i) no statistical information is maintained on the average length of the recovery procedure and the number of decisions to reinstate a worker fired with anti-union motives (however, pursuant to section 344 of the LC, these disputes are examined by the regional court within three months after receipt of the application, and by the district court within one month of receipt of the appeal); (ii) workers concerned may file both a claim for compensation for staying unemployed under section 225 of the LC, and a claim contesting the dismissal and seeking reinstatement pursuant to section 344 of the LC; (iii) section 225 of the LC aims to compensate the worker for the harm arising from the missed opportunities to receive remuneration due to an unlawful dismissal; (iv) however, it limits the amount of possible compensation to the amount of the employee's gross remuneration for the time of unemployment due to unlawful dismissal, up to a maximum of six months, in order to motivate the worker to look for a job on the labour market; and (v) if the worker has suffered harm on other grounds, including because of discrimination, he or she has the opportunity to seek compensation for them under the general civil law or through the mechanisms provided for in the Protection against Discrimination Act. **Having duly noted the information provided by the Government, the Committee invites it to collect statistical information on the application of the existing mechanisms to protect against anti-union discrimination, including anti-union dismissals, noting in particular the number and type of requests for remedies brought under the LC, the Protection against Discrimination Act, and/or general civil law, as well as their outcome detailing the number of reinstatement orders and the amount of compensation awarded. The Committee further encourages the Government to hold consultations with the most representative organizations to assess, in light of this statistical information, the need for any additional measures to ensure that the remedies to protect against anti-union discrimination provide a sufficiently dissuasive sanction both in law and in practice.**

*Article 2. Protection against acts of interference.* In its preceding comments the Committee had: (i) observed that national legislation does not provide adequate protection of workers' organizations against acts of interference by employers or employers' organizations; (ii) taken note of the ITUC allegations of acts of harassment and interference on the employer's side, and of the insistence by the Confederation of Independent Trade Unions in Bulgaria (CITUB) on the

need to adopt penal sanctions against acts of interference; and (iii) requested the Government to indicate the legislative measures taken or envisaged to this end. **Regretting the lack of information provided by the Government in this respect, and recalling that national legislation should explicitly prohibit all acts of interference mentioned in the Convention and make express provision for rapid appeal procedures, coupled with dissuasive sanctions, the Committee once again requests the Government to take the necessary measures in the near future to amend the national legislation accordingly. The Committee requests the Government to provide information on any progress achieved in this respect.**

*Articles 4 and 6. Collective bargaining in the public sector.* The Committee recalls that for a number of years it has been requesting the Government to amend the Civil Servants Act so that the right to collective bargaining of public service workers not engaged in the administration of the State is duly recognized. The Committee notes that the Government provides no information in this regard, and observes that the 2016 amendments to the Civil Servants Act did not address the need to bring this aspect of national legislation into conformity with the Convention. The Committee must recall that, although Article 6 of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories of public servants should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages. **The Committee urges the Government to take, as soon as possible, the steps necessary to amend the Civil Servants Act so as to ensure the right to collective bargaining of public servants not engaged in the administration of the State. The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

*Application of the Convention in practice.* **The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the percentage of the workforce covered by these agreements, as well as on any measures undertaken to promote the full development and utilization of collective bargaining under the Convention.**



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

## Observation 2019

The Committee had previously noted the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018, according to which private and public sector employers would undermine the collective bargaining process by delaying negotiations, promoting negotiations with yellow unions and concluding agreements directly with works councils. The Committee notes the Government's response to these observations, according to which: (i) the Labour Act 2014 provides trade unions with the legislative possibility to take collective action in the event of a conflict related to the conclusion, amendment or renewal of a collective agreement; and (ii) the internal regulations adopted by companies in agreement with works councils have no negative impact on the collective bargaining process and, on the contrary, improve the protection of workers in the country. **While taking due note of these elements, the Committee requests the Government, on the one hand, to give more details on the relationship between the company's internal regulations and the collective agreements negotiated with trade unions and, on the other hand, to provide statistics on the number of collective agreements signed and in force in the country, indicating the sectors concerned and the number of workers covered.**

The Committee further notes that the Government has not responded to its previous comments, which are reproduced below.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Rapid appeal procedures.* In its previous comments, the Committee had noted the allegations of excessive court delays in dealing with cases of anti-union discrimination and requested the Government to provide details on the measures taken or envisaged to accelerate judicial proceedings in cases of anti-union discrimination and to provide statistics concerning the impact of such measures on the length of proceedings. The Committee notes that the Government indicates that: (i) due to the large number of labour disputes in the area, the Government has undertaken judicial reforms in order to accelerate judicial proceedings including the establishment of the Municipal Labour Court in Zagreb; (ii) by virtue of the Law on Areas and Seats of the Courts, which entered into force on 1 April 2015, five county courts (Bjelovar County Court, Osijek County Court, Rijeka County Court, Split County Court and Zagreb County Court) have been charged with the harmonization of court practices and the acceleration of appeal proceedings regarding labour disputes before municipal courts; and (iii) since 2014, 30 civil actions regarding anti-union discrimination have been brought before the courts, of which eight complaints have been solved by the courts; 31 cases are still pending (nine of which were filed before 2014). While taking due note of the detailed elements provided by the Government, the Committee observes with **concern** that it stems from this information that the judicial resolution of anti-union discrimination cases is still characterized by excessive delays. **Recalling that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice, the Committee urges the Government to take, jointly with the competent authorities, effective measures to significantly accelerate the judicial proceedings in cases of anti-union discrimination. The Committee requests the Government to provide information in this respect as well as on the results obtained, and recalls that it may avail itself of the technical assistance of the Office.**

*Articles 4 and 6. Collective bargaining of public servants not engaged in the administration of the State.* The Committee recalls that since 2007 it has been examining allegations related to the unilateral modification, for financial reasons, of the substance of collective agreements in the public sector through the adoptions of several Acts. The Committee recalls that this issue was also addressed by the Committee on the Application of Standards in 2014 and by the Committee on Freedom of Association (CFA). The Committee further observes that both the 2016 observations of the Union of Autonomous Trade Unions of Croatia (UATUC) and the Association of Croatian Trade Unions (MATICA) also refer to this question. The Committee notes that, concerning the effects of the Act on Withdrawal of Right to Salary Increase Based on Years of Service, the CFA had noted in October 2016 that the Act was no longer in force since 1 January 2016 and had understood that negotiations concerning wage increase between the Government and public and civil service unions had since begun. After recalling that, in the context of economic stabilization, priority should be given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector, the CFA had trusted that, for the maintenance of the harmonious development of labour relations, the parties would bargain in good faith and make every effort to reach an agreement (see 380th report of the Committee on Freedom of Association, Case No. 3130, paragraph 398). The Committee further notes that the Government states that: (i) all acts of realization adopted for the period 2011–17 do not contain provisions on the unilateral amendment of the provisions of a collective agreement in the public service for financial reasons; (ii) the Act on non-payment of certain financial rights of persons employed in public services is no longer in force since 1 January 2016; and (iii) since 2017, the basic salary for both civil and public servants increased by 2 per cent, and other material rights are being fully paid as agreed in collective agreements. The Committee takes due note of this information. **Underlining the importance of ensuring that any future Act related to the State Budget does not enable the Government to modify, for financial reasons, the substance of collective agreements applicable to the public servants not engaged in the administration of the State, the Committee requests the Government to provide updated information on the collective agreements negotiated and signed in the public sector, and to indicate whether the 2 per cent increase in wages is the result of collective bargaining.**

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

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

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

## Observation 2019

*Articles 2 and 3 of the Convention. Gender equality and promotion of women's access to employment and occupation.* In its previous comment, the Committee asked the Government to provide information on the measures taken to promote women's access to a wider range of jobs and to give them a wider choice of educational and vocational opportunities. The Committee also asked the Government for details of the number and proportion of female civil servants and civil service employees in posts of responsibility. The Committee notes the Government's reference to the National Employment Promotion Plan (NEEP) 2011–12, which was extended to 2013, and the fact that one of its priorities was the improvement of the employability of women. Measures in this plan included the revision of existing labour market policies in order to foster the labour market participation of women with few qualifications and to provide educational and training programmes adapted to the needs and circumstances of women (especially those with few skills) who are returning to the labour market. The Government indicates that in 2012, 36 per cent of new entrants to educational programmes (for unemployed persons) were women. That year, vocational training was introduced in the form of work-based training (occupational training without commencing employment) which, according to the Government, allows unemployed persons to gain professional experience in the occupational sector for which they were trained. In 2012, 5,456 persons benefited from this (72 per cent were women) and 14,445 new participants joined the programme (71 per cent women). The Committee notes the Government's statement that the Croatian Employment Service (HZZ) implemented a project entitled "Women in the Labour Market" in order to reduce unemployment and contribute to the elimination of all forms of discrimination against women in the labour market, but that it does not specify the timeframe for the project. The Government also indicates that, in February 2012, a "Palette of new active employment policy measures for women who are unfavourably positioned on the labour market" was completed. As a result, 50 employees of the HZZ and social welfare centres were trained; a trainer manual was developed; a "Guide for gender-aware policy" and a "Handbook with examples of good practices in implementing active labour market policies for women unfavourably positioned in the labour market" were published; and a short documentary film was produced.

The Committee notes the concerns expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) that the



effectiveness of the Office for Gender Equality and the Ombudsperson for Gender Equality is hampered by the inadequacy of the human, technical and financial resources allocated to them (CEDAW/C/HRV/CO/4-5, 28 July 2015, paragraph 12). Noting that the National Gender Equality Policy 2011–15 has expired, the Committee notes the Government's indication in its report that the Office for Gender Equality is in the process of preparing a new policy for the period 2017–20 but that, to date, it has not been adopted. **The Committee asks the Government to provide information on the adoption of a new National Gender Equality Policy, its content and the period it covers. It also requests information on the results achieved under the National Gender Equality Policy 2011–15. The Government is also asked to indicate during which period the project “Women on the Labour Market” was implemented; to provide information on results achieved and to indicate whether this project, or any similar project, has been renewed. The Committee asks the Government to provide information on the number and proportion of women in the labour force, in both the private and public sectors, if possible by sectors of activity.**

*Equality of opportunity and treatment in employment and occupation of the Roma.* In its previous comments, the Committee asked the Government to provide information on the measures taken to ensure access to education for Roma children without discrimination; to strengthen its efforts to promote employment opportunities and to ensure equal treatment of Roma people, particularly women, in employment and occupation; and to provide specific information on the impact of the job search assistance provided for the Roma people by the employment service. The Government indicates that the HZZ does not monitor unemployed persons according to their national extraction, but that it is estimated that, out of the 16,975 persons of Roma national minority living in Croatia (according to the census conducted in 2011), 4,499 were registered as unemployed with the HZZ in 2011 and 4,206 in 2017. In the period 2015–17, on average, 48 per cent of Roma people registered with the HZZ were women. The Committee notes the Government's description of the regular activities of the HZZ to which all registered unemployed persons, including Roma, are invited as well as the activities directed exclusively at these persons, such as group counselling, targeted visits to employers to promote the employment of members of the Roma community, promotion of existing employment and self-employment measures and advice on starting a business. It also notes that the HZZ carries out a number of active labour market policy measures targeting disadvantaged unemployed persons, applying the “Guidelines for the development and implementation of active employment policy in the Republic of Croatia for the period 2015–2017”, in order to increase the employment rate of disadvantaged groups, including the Roma. The Committee notes that the Annual Report of the Ombudsperson for 2017 points to discrimination in employment on the grounds of ethnicity, with the Roma national minority being particularly affected. According to the Ombudsperson, employers are still reluctant to employ persons belonging to the Roma community, mainly due to widespread stereotypes about their way of life and work habits. The Committee also notes the adoption of a National Roma Inclusion Strategy (NRIS) 2013–20 identifying employment as one of the four “crucial areas” of a comprehensive strategy. Regarding education, the Committee notes that, according to a report of the European Commission against Racism and Intolerance (ECRI) dated 21 March 2018, despite the introduction of free pre-school education in the year preceding enrolment in primary school which has contributed to an increase in the enrolment rate of Roma children, only 32 per cent of these children aged from 4 to 6 years attended pre-school in 2016 (compared to 72 per cent of the general population). Although the rate of enrolment of Roma children in compulsory primary school is as high as in the general population (95 per cent), this rate drops significantly at secondary school (35 per cent compared to 86 per cent of the general population). According to the ECRI, 77 per cent of young Roma people aged 16–24 years are neither in work nor in education or training. **The Committee reiterates its requests to the Government to provide information on the measures taken to ensure access to education, including pre-school education for Roma children without discrimination. It also asks the Government to continue providing information on the measures specifically designed to promote employment opportunities and to ensure equal treatment of Roma people, and particularly women, in employment and occupation. The Government is also asked to provide more details on the impact of the job search assistance provided for Roma people by the employment service and to indicate the results achieved through the implementation of the National Roma Inclusion Strategy (NRIS) 2013–20.**

*Article 3(d). Access of national minorities to employment under the control of a national authority.* In the absence of information regarding the implementation of the Civil Service Employment Plan for persons belonging to national minorities for the period 2011–14, the Committee once again asks the Government to provide information on the following:

- the action taken by the Government to promote and ensure access by members of national minorities to public employment in the framework of the Civil Service Employment Plan and the results achieved;
- the progress made in achieving recruitment targets for minorities;
- the current ethnic and gender composition of the civil service; and
- any obstacles encountered in the implementation of the above-mentioned plan.

*Enforcement.* The Committee notes that the Annual Report of the Ombud for 2017 underlines the issue of under-reporting of cases of discrimination, and the lack of awareness of the issue and of the available avenues for redress. It also pointed out that the currently available data on the number of court proceedings and their completion, the rate of success of documents and sanctions against the perpetrators of discrimination may be discouraging for victims, with protracted procedures, few claims upheld, low levels of compensation and sentences often below the legally required minimum. The Ombud recommended further improvements in the position of victims and the development of preventive action and better training on discrimination, as well as more dissuasive sentencing. **The Committee once again asks the Government to provide information on the application in practice of the relevant provisions of the Labour Act, 2014, and the Anti-Discrimination Act, 2008, including the number and nature of cases of discrimination in employment and occupation reported to the Ombud or filed with the courts by the labour inspectorate. The Committee also once again asks the Government to clarify whether labour inspectors conduct any awareness-raising activities aimed at eliminating discrimination in employment and occupation on any of the grounds prohibited by the national legislation. The Committee reiterates its request for the Government to: (i) take the necessary measures to promote public awareness of the anti-discrimination legislation and the available remedies; (ii) indicate the measures taken to assist victims in bringing discrimination cases; and (iii) ensure that victims' rights are protected once they have filed a complaint.**

Noting the concerns expressed by CEDAW that the effectiveness of the Office for Gender Equality and the Ombud for Gender Equality are hampered by the inadequacy of the human, technical and financial resources allocated to them, the Committee wishes to recall that a lack of human and material resources has an impact on the capacity of these bodies to perform their tasks and exercise their powers effectively. **The Committee asks the Government to identify the steps taken or envisaged to ensure that these equality bodies have sufficient resources to achieve their full mission.**

**C097 - Migration for Employment Convention (Revised), 1949 (No. 97) C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)**
**Observation 2019**

In order to provide a comprehensive view of certain issues relating to the application of the ratified Conventions on migrant workers, the Committee considers it appropriate to examine Conventions Nos 97 (migration for employment) and 143 (migrant workers) together.

*Article 6 of Convention No. 97 and Articles 10 and 12 of Convention No. 143. Equality of opportunity and treatment.* The Committee previously noted the adoption of new legislation to guarantee equality of treatment between national and migrant workers. It notes the Government's indication, in its report, that the social security scheme covers every person gainfully occupied and does not make any distinction between nationals and non-nationals. Furthermore pensions paid by the social security scheme are exported to the beneficiaries who reside abroad without any restrictions. Referring to its previous comments, the Committee notes that the Government did not provide any information on the nature and impact of measures taken to implement the Action Plan for the Integration of Immigrants who are Legally Residing in Cyprus (2010–2012) and the Strategy on the Employment of Foreign Workers of 2007. While noting that such programmes do not seem to have been extended, the Committee refers to its 2019 observation on the application of both the Equal Remuneration Convention, 1951 (No.100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), where it notes that several United Nations (UN) treaty bodies expressed concern about the discrimination experienced by migrant workers, inter alia, in accessing employment, as well as the increasing discriminatory attitudes and racial stereotypes relating to persons of foreign origin. Recalling that it previously noted the precarious situation and vulnerability of migrant domestic workers, the majority of whom are women, as well as the absence of a monitoring system of their working conditions, the Committee notes that migrant domestic workers are still limited to two changes of employer over a six-year period and that change of sector is only possible with the approval of the Minister of the Interior. It notes that, in their 2018 and 2017 concluding observations respectively, the UN Committee on the Elimination of Discrimination against Women (CEDAW) and the UN Committee on the Elimination of Racial Discrimination (CERD) remained concerned about: (i) the persistent exploitation faced by migrant domestic workers and the difficulties they encounter in changing employers; (ii) the obstacles impeding access to justice for women migrant domestic workers, including the fear of detention and deportation while legal proceedings are pending; as well as (iii) the lack of regular labour inspections to monitor the working conditions and employment contracts of women migrant domestic workers (CEDAW/C/CYP/CO/8, 25 July 2018, paragraph 38, and CERD/C/CYP/CO/23-24, 2 June 2017, paragraph 22). In this regard, the Committee notes that, in the report it made in the context of the Universal Periodic Review (UPR), the Government indicated that the ratification of the Domestic Workers Convention, 2011 (No. 189), was under consideration (A/HRC/WG.6/32/CYP/1, 13 November 2018, paragraph 8). The Committee further notes that, in April 2019, the Human Rights Council, in the context of the UPR, recommended that the Government take concrete actions to strengthen the capacity of labour inspectors and the police to improve oversight of the working conditions of domestic workers and prevent them from labour exploitation (A/HRC/41/15, 5 April 2019, paragraph 139). Noting from Eurostat that, in 2018, the highest number of first-time asylum seeker applicants relative to the population was recorded in Cyprus, where their number rose by more than 70 per cent, the Committee notes that several UN treaty bodies expressed specific concern at the differential treatment and the very limited range of employment opportunities of asylum seekers, who are allowed to work only in certain sectors, mostly in remote areas without adequate transport or accommodation provided, and receive some welfare benefits in the form of vouchers. They called on the Government to guarantee asylum seekers equal labour rights and equal rights to welfare benefits (CEDAW/C/CYP/CO/8, 25 July 2018, paragraph 36; CERD/C/CYP/CO/23-24, 2 June 2017, paragraphs 17 and 20; and E/C.12/CYP/CO/6, 28 October 2016, paragraphs 15 and 16). In that regard, the Committee notes that, in 2016, the Ombudsman highlighted the harsh situation facing young African women seeking asylum, whose welfare grants were interrupted when they refused to take up jobs in agriculture or livestock farms, where they would have to reside on the farm, possibly in the same accommodation with men and without childcare facilities while being pregnant or with infants. While the report of the Ombudsman concluded that the current policy framework leads to indirect discrimination on multiple grounds, the policy of forcing asylum seekers to accept the worst jobs in the labour market persists in spite of the Ombudsman's recommendations (European Commission, Country report on non-discrimination, Cyprus, 2018, page 74). **Referring to its 2019 comments on the application of the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee urges the Government to strengthen its efforts to ensure equality of opportunity and treatment for migrant workers, both European Union citizens and third-country nationals, and more particularly migrant domestic workers, by: (i) enhancing and expanding their access to employment opportunities, including by removing the restrictions imposed on domestic workers wishing to change employers; (ii) ensuring regular labour inspections of workplaces, mainly in sectors where migrant workers are most represented, such as domestic work and agriculture; (iii) raising public awareness of the relevant legislative provisions, the procedures and remedies available; as well as (iv) enhancing migrant workers' access to justice without fear of detention or deportation, both while legal proceedings are pending and also at earlier investigative stages. It asks the Government to provide information on any proactive measures undertaken – including in the framework of any plan, strategy or policy adopted since the Action Plan for the Integration of Immigrants who are Legally Residing in Cyprus which ended in 2012 – to shape the national equality policy for foreign workers and on the involvement of workers' and employers' organizations in this context. The Committee asks the Government to provide information on the number and nature of cases or complaints of unequal treatment of migrant workers that have been detected or dealt with by the labour inspectors, the Ombudsman, the courts or any other competent authorities, concerning in particular terms and conditions of work of migrant workers, including remuneration, social security, and accommodation as referred to in Article 6(1)(a) and (b) of Convention No. 97.**

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

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**
**Observation 2019**

*Articles 2 and 3 of the Convention. Equality of opportunity and treatment for men and women.* The Committee previously noted the persistent horizontal and vertical gender segregation in employment, in particular in the private sector – despite the various measures implemented. The Committee notes the Government's statement, from the report submitted in the context of the Universal Periodic Review (UPR), that it will prioritize the protection and promotion of women's rights and gender equality via the implementation of the New National Action Plan for Gender Equality 2018–2021 which focuses primarily on protecting and empowering vulnerable groups of women (A/HRC/WG.6/32/CYP/1, 13 November 2018, paragraphs 5 and 11). Concerning the measures implemented to address occupational gender segregation, the Committee notes, from the statistical information provided by the Government, that the proportion of women participating in Human Resources Development Authority (HRDA) Programmes remained stable from 2014 to 2017, reaching 41.2 per cent in 2017 (compared to 58.8 per cent of men). It observes however that the HRDA training specifically aiming at the improvement of the employability of inactive women was discontinued in 2016 while the unemployment rate of women remains higher than that of men (9.9 per cent for women compared to 7.7 per cent for men in 2019). The Committee also notes that, according to the Labour Force Survey (LFS) of the Statistical Service of Cyprus (CYSTAT), for the first quarter of 2019, the employment rate of women was still substantially lower than that of men (52.2 per cent for women compared to 63.4 per cent for men), with women being under-represented in senior and decision-making positions (women represented only 16.9 per cent of managers in 2018) and still mainly concentrated in specific sectors, such as education (74.4 per cent of women) and human health and social work activities (71.6 per cent of women). The Committee further notes that, in their concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and the United Nations Committee

on Economic, Social and Cultural Rights (CESCR) expressed concern about: (i) the concentration of girls in traditionally female-dominated fields of study and career paths and their under-representation in vocational training and in certain fields of higher education, including technology and engineering; (ii) the high number of girls who suffer from discrimination and sexual harassment in schools; (iii) the large gender disparity in the labour market and more particularly the disproportionately high unemployment rate among women, including young and highly educated women and the low number of female entrepreneurs compared with their male counterparts; (iv) the continuing horizontal and vertical occupational sex segregation; (v) the under-representation of women in decision-making positions both in the public and private sectors, and the concentration of women in part-time and low-paid jobs; as well as (vi) the large and persistent gender pay gap, particularly in the private sector (CEDAW/C/CYP/CO/8, 25 July 2018, paragraphs 24, 34–37 and 42; and E/C.12/CYP/CO/6, 28 October 2016, paragraphs 17–19). The Committee notes that, in April 2019, the Human Rights Council, in the context of the UPR, also expressly recommended that there was a need to: (i) increase the level of participation of women in the labour market and enable a balanced representation of men and women at all levels, including at senior and decision-making levels; and (ii) combat gender discrimination in employment (A/HRC/41/15, 5 April 2019, paragraph 139). ***In light of the persistent occupational gender segregation of the labour market, the Committee asks the Government to take the necessary steps, including in collaboration with employers' and workers' organizations, to raise awareness of the principle of equal opportunity and treatment for men and women in employment and occupation and the relevant legislative provisions, assess the measures taken and implemented and, if necessary, take corrective measures. It asks the Government to provide information on any proactive measures implemented, including in the framework of the National Action Plan for Gender Equality for 2018–2021: (i) to effectively enhance women's economic empowerment and access to decision-making positions; and (ii) to address vertical and horizontal occupational gender segregation and gender stereotypes by encouraging girls and women to choose non-traditional fields of study and professions and promoting women's access to a wider range of jobs with career prospects and higher pay. The Committee asks the Government to provide updated statistical information on the participation of men and women in education and training, as well as in employment and occupation, disaggregated by occupational categories and positions.***

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 2019*

The Committee notes the observations from the Danish Trade Union Confederation (FH), submitted with the Government's report, as well as the Government's comments, concerning issues addressed in the present observation.

*Article 4 of the Convention. Right to free and voluntary collective bargaining.* In its previous comments, the Committee had observed that section 10 of the Act on the Danish International Register of Shipping (DIS Act) continued to have the effect of limiting the scope of collective agreements concluded by Danish trade unions to seafarers on ships registered in the Danish International Ship Register (DIS) who were Danish or equated residents and of restricting the activities of Danish trade unions by prohibiting them from representing, in the collective bargaining process, those of their members who were not considered as residents in Denmark. While the Committee had noted the establishment by the Danish Shipowners Association (DSA) and the Danish Metal Workers' Union (DMWU) of a joint working group in the Contact Committee under the Danish International Ship Register Main Agreement (DIS Main Agreement) in respect of the existing disagreement on section 10 of the DIS Act, the Committee had further observed that several social partners were not involved in the working group and that no significant progress had been made towards addressing the legislative aspect of the matter. The Committee had therefore requested the Government: (i) to continue making every effort to ensure full respect of the principle of free and voluntary collective bargaining so that Danish trade unions may freely represent in the collective bargaining process all their members – Danish or equated residents, as well as non-residents – working on ships sailing under the Danish flag, and that collective agreements concluded by Danish trade unions may cover all their members working on ships sailing under the Danish flag regardless of residence; and (ii) to engage in a tripartite national dialogue, taking all the necessary measures to enable all the relevant workers' and employers' organizations to participate therein, if they so wish, so as to find a mutually satisfactory way forward. The Committee notes the Government's indication that: (i) after discussions in the Contact Committee under the DIS Main Agreement, the organizations proposed that the DIS Act should be amended in order to allow Danish trade unions to enter into collective agreement on behalf of all seafarers on ships mainly carrying out the activities concerned in the Danish territorial waters or continental shelf area for more than 14 days a month; (ii) the former Minister for Industry, Business and Financial Affairs presented a proposal for an Act amending the DIS Act, which was drawn up in accordance with the organizations' proposal to the Parliament; (iii) the Act includes seafarers who are engaged in a number of activities which include, among others, certain types of guard service as well as support and service functions, and construction, repair and dismantling of oil installations; (iv) it is a requirement that the ships mainly carry out the activities concerned in the Danish territorial waters or continental shelf area for more than 14 days a month; and (v) the Parliament passed the Act unanimously and it is expected to enter into force later this year. The Committee notes the FH's statement that while it recognizes the importance of the amendment to the DIS Act referred to by the Government, it affirms that the amendment is not sufficient to address the matter, as its scope is limited to vessels operating in Danish territorial waters or continental shelf, having no effect on vessels covered by the DIS Act. The Committee takes note that, in response to the observation made by the FH, the Government states the conditions leading to the establishment of the DIS still apply. ***While welcoming the step taken through the amendment of the DIS Act, the Committee requests the Government to continue, in consultation with the social partners, to make every efforts to ensure the full respect of the principles of free and voluntary collective bargaining so that Danish trade unions may freely represent in the collective bargaining process all their members and that collective agreements concluded by Danish trade unions may cover all their members – working on ships sailing under the Danish flag whether they are within or beyond Danish territorial waters or continental shelf, and regardless of their activities. The Committee requests the Government to provide information on any developments in this regard.***



**C042 - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)****Observation 2019**

The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received in 2017.

*Article 2 of the Convention. Conformity of the national list of occupational diseases with the Schedule established by the Convention.* Further to its previous request on the draft national list of occupational diseases, the Committee notes with **satisfaction** that as indicated by the Government in its report, Annex I of the European schedule of occupational diseases, 2003/670/EC, became an integral part of the Presidential Decree No. 51 of 2012. The Committee further notes the Government's indication that a working group is to be established to set out the criteria for the recognition of occupational diseases based on the Explanatory Notes of the European Commission. In this regard, the Committee notes the GSEE's observations that the new Schedule of occupational diseases has not been activated yet due to the fact that the necessary legislation determining the diagnostic criteria has not been issued. **The Committee requests the Government to provide information in this respect.**

*Application of the Convention in practice.* In its previous comments, the Committee requested the Government to explain the reasons for the significant drop in the number of new cases of recognized occupational diseases and to provide information on the functioning in practice of the procedure for recognizing a disease as occupational. The Committee notes the Government's indication that the number of occupational diseases remains low (less than 10 per year) and that the statistical processing is currently not feasible in practice. The Government further indicates its participation in an informal EU Group of Experts to lay down common criteria for diagnosing occupational diseases and address the lack of statistical data reliability and comparability on occupational diseases. The Committee notes the GSEE's observations that the prevalence of occupational diseases is still not adequately monitored. **The Committee requests the Government to provide information on the necessary measures taken or envisaged to ensure the monitoring and collection of statistical data on occupational diseases.**

**C100 - Equal Remuneration Convention, 1951 (No. 100)****Observation 2019**

The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 October 2019.

*Legislative developments.* The Committee notes with **interest** the adoption of Law No. 4604/2019 on Substantive Gender Equality Preventing and Combating Gender-Based Violence of 12 June 2019 which encourages public and private enterprises to draft and implement "Equality Plans" with specific strategies and targets to prevent all forms of discrimination against women and provides that the General Secretariat for Family Policy and Gender Equality (GSFPE) can award "Equality Labels" to them as a reward for their engagement in favour of equal treatment, including equal pay for equal work, and balanced participation of women and men in managerial positions or in professional and scientific groups set up in the enterprise (section 21). It further notes that the Law provides for the establishment of municipal and regional committees for gender equality to promote women's rights at local level (sections 6 and 7), as well as a National Council for Gender Equality (ESIF) under the auspices of the GSFPE which aims at consulting relevant stakeholders in order to submit proposals to the GSFPE for the adoption of policies and actions promoting gender equality, and assess and evaluate existing policies on gender equality (section 9). The Committee notes the enlarged scope of application of the Act which applies to persons who are employed or are candidates for employment in both the public and private sectors, irrespective of the form of employment and nature of services provided, as well as to freelance professional and persons in vocational training or candidate to vocational training (section 17). **The Committee asks the Government to provide information on the application of the Law No. 4604/2019 in practice, and more particularly of its sections 6, 7, 9, 17 and 21, indicating: (i) the number, functioning and activities of municipal and regional committees for gender equality; (ii) the functioning and activities of the National Council for Gender Equality; (iii) the number of equality plans elaborated and implemented by employers, both in the public and in the private sectors; and (iv) the number of equality labels awarded. The Committee asks the Government to provide full information on the relevant activities and measures implemented in this framework as well as on their impact on the implementation of the provisions and principles of the Conventions.**

*Article 2 of the Convention. Gender pay gap.* Referring to its previous comments on the gender pay gap and the occupational gender segregation of the labour market, the Committee notes, from the statistical information forwarded by the Government, that while the gender pay gap decreased from 15 per cent in 2010 to 12.5 per cent in 2014, the average monthly salary of women remained substantially lower than those of men in almost all economic sectors, even when men and women workers are employed in the same occupational category. It observes that, in 2018, the Hellenic Statistical Authority (ELSTAT) carried out a Labour Force Survey (LFS), but regrets that no updated information on the gender pay gap has been included in this survey nor has such information been published since 2014. The Committee notes that the GSEE highlights that the gender pay gap may be higher if data was properly collected, which demonstrates that there is an urgent need to establish an independent mechanism that will monitor this phenomenon, record and process targeted data already stored in existing information systems for employment and social security purposes. The Committee notes, from the 2018 LFS, that the employment rates for women slightly increased from 46.8 per cent in 2016 to 49.1 per cent in 2018, but remained 21 percentage points below that of men (70.1 per cent in 2018), being still one of the lowest employment rate for women among the European Union (EU average of 66.5 per cent), as highlighted by the GSEE. It further notes that women are still mostly concentrated in low-paid jobs, representing 61.2 per cent of clerical support workers but only 26.8 per cent of senior officials and managers and 9.1 per cent of board members of the largest publicly listed companies in the EU (Labour Force Survey of ELSTAT and European Commission, 2019 Report on equality between men and women in the EU, page 27). It further notes that, as highlighted by the European Commission and Eurostat, the gender gap in unpaid working time is one of the higher in the EU which is reflected in the labour market by the fact that more than twice as many women as men are in part-time employment (13.2 per cent and 6 per cent, respectively in 2018). The Committee takes note of the adoption of the National Action Plan for Gender Equality (NAPGE) for 2016–20 and more particularly of the Government's acknowledgement that: (i) the gender pay gap and pension gap persist; (ii) employed women have low-paid and precarious jobs, with little room for promotion and are unable to develop professionally and educationally; and (iii) women still undertake the bulk of domestic work and spend periods away from the labour market more frequently than men, which also impact their future earnings and pensions. It notes that, as a result, the NAPGE sets specific actions to examine the transferability of good practices to tackle the gender pay gap, such as an annual report on the gender pay structure, and the design of a "salary and wage calculator" which provides up-to-date and easily accessible information on the usual wages in different industries and regions. While welcoming the adoption of the NAPGE, the Committee notes that, in April 2019, the United Nations (UN) Working Group on Discrimination Against Women in Law and in Practice highlighted the need for women's equal access to the labour market and improved pay and conditions at work, and expressed specific concern at the persistence of the gender pay gap and the absence of women in leadership roles (OHCHR, Press statement of 12 April 2019). **In light of the persistent gender pay gap and occupational gender segregation of the labour market, the Committee asks the Government to provide information on any measures taken, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the Convention. It asks the Government to provide information on the proactive measures implemented, including in the framework of the National Action Plan for Gender Equality for 2016–20, to address the gender pay gap by identifying and addressing its underlying causes, such as vertical and horizontal occupational gender segregation and stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family, by promoting women's access to a wider range of jobs with career prospects and higher pay. Recalling that regularly collecting, analysing and disseminating information is important for addressing**

**appropriately unequal pay, determining if measures taken are having a positive impact on the actual situation and the underlying causes of the gender pay gap, the Committee requests the Government to take all necessary measures to provide updated statistical information on the gender pay gaps, both in the public and private sectors.**

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

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

### Observation 2019

The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 October 2019.

**Legislative developments.** The Committee notes with **interest** the adoption of Law No. 4604/2019 on Substantive Gender Equality, Preventing and Combating Gender-Based Violence of 12 June 2019 which encourages public and private enterprises to draft and implement “Equality Plans” with specific strategies and targets to prevent all forms of discrimination against women, and provides that the General Secretariat for Family Policy and Gender Equality –GSFPE (previously the General Secretariat for Gender Equality, GSGE) can award “Equality Labels” to public and private enterprises as a reward for achievements in the promotion of equality, including through balanced participation of women and men in managerial positions or in professional and scientific groups, equality in professional development, and by the implementation of equality plans or other innovative measures to promote substantive gender equality (section 21). The Committee further notes that the law provides for the establishment of municipal and regional committees for gender equality to promote women’s rights at local level (sections 6 and 7). It also provides for a National Council for Gender Equality (ESIF) under the auspices of the GSFPE for the purposes of consulting relevant stakeholders in order to submit proposals to the GSFPE for the adoption of policies and other action promoting gender equality, and for the purpose of assessing and evaluating existing policies on gender equality (section 9). The Committee notes the scope of the Act which applies to persons who are employed or are candidates for employment in both the public and private sectors, irrespective of the form of employment and nature of services provided, as well as to freelance professional persons and persons in vocational training or candidates for vocational training (section 17). **The Committee asks the Government to provide information on the application of the Law No. 4604/2019 in practice, and more particularly of its sections 6, 7, 9, 17 and 21, indicating: (i) the number and activities of municipal and regional committees for gender equality; (ii) the activities of the National Council for Gender Equality; and (iii) the number of equality plans developed and implemented by employers, both in the public and in the private sectors and the number of equality labels awarded. The Committee asks the Government to provide detailed information on the relevant activities and measures implemented within this framework as well as on their impact.**

In addition, the Committee notes with **interest** the adoption of the Equal Treatment Law No. 4443/2016, transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of race or ethnic origin, and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which replaces Law No. 3304/2005 and expands the list of prohibited grounds of discrimination with the addition of the following new grounds: chronic illness, ancestry, family or social status, and gender identity or characteristics (sections 2(2) and 3). The Committee, however, notes that section 4(1) of the Law No. 4443/2016 provides that “a difference of treatment which is based on a characteristic related to any of the grounds of discrimination shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes an essential and decisive occupational requirement, provided that the objective is legitimate and the requirement is proportionate”. **The Committee asks the Government to provide information on the application of section 4(1) of Law No. 4443/2016 in practice, giving examples of cases in which such provision has been used. It further asks the Government to provide a copy of any relevant court decisions, and particularly on any interpretation made of the terms “essential and decisive occupational requirement”, “legitimate objective” and “proportionate requirement”.**

**Article 1(1)(b) of the Convention. Additional grounds. Disability.** Recalling that the national legislation prohibits discrimination on the ground of disability in employment and occupation, the Committee notes that Act No. 4488/2017 of 13 September 2017 on improving the protection of employees and on the rights of persons with disabilities provides that any natural person or public organization in the wider public or private sector, is required to facilitate the equal exercise of the rights of persons with disabilities in their respective fields of competence or activity by taking all appropriate measures and refraining from any action which may discriminate against disabled persons. The Committee notes, from the statistical information provided by the Government, that seven cases of discrimination on the ground of disability or chronic disease were reported by the labour inspectorate, which imposed fines upon the company concerned in three of those cases. It notes that in its 2018 report the Ombudsperson further indicates that 14 per cent of cases received concerned discrimination on grounds of disability or chronic disease. The GSEE indicates that specific steps should be taken to raise awareness of the fact that the treatment of an employee with a disability may conceal discrimination. The Committee notes that in its 2019 concluding observations, the United Nations (UN) Committee on the Rights of Persons with Disabilities expressed concern at the high level of unemployment among persons with disabilities and the insufficient efforts to ensure their inclusion in the open labour market, particularly with regard to women with disabilities (CRPD/C/GRC/CO/1, 29 October 2019, paragraph 38(a)). **The Committee asks the Government to adopt proactive measures in order to promote equal opportunity and treatment for persons with disabilities in education, vocational training and employment, including by enhancing their access to a wider range of jobs in the open labour market. It asks the Government to provide statistical information on the employment rate of persons with disabilities, disaggregated by sex and work environment (segregated work environment or open labour market).**

**Age.** The Committee recalls that Greek national legislation prohibits direct and indirect discrimination in employment and occupation on the ground of age (section 2(2)(a) of Law No. 4443/2016). Referring to its 2019 direct request on the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee welcomes the removal, as of February 2019, of the lower minimum wage rate which was set since 2012 for young employees under the age of 25. The Committee notes, however, that the European Commission recently observed that, while the national legislation allows for exceptions based on age for specific reasons, there is relevant case law, particularly on the introduction of age limits, that has found that such exceptions constitute discrimination based on age (European Commission, European network of legal experts in gender equality and non-discrimination, Country Report, Greece, 2018, p. 49). The Committee notes with **concern** that, in its 2018 special report on equal treatment, the Ombudsperson indicates that discrimination on the ground of age is constantly the subject of investigations by his Office and refers to several cases of maximum and/or minimum age limits unjustifiably imposed in the case of job vacancies, both in the public and private sectors. Noting the Government’s statement in its report that complaints concerning age limits in job vacancies are frequently made, the Committee recalls that under the Convention age is considered a physical condition in respect of which special measures of protection and assistance may be necessary, as provided for in Article 5(2) of the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 813). **Noting that job vacancies frequently impose restrictions based on age, the Committee asks the Government to take steps to prevent and address cases of direct or indirect discrimination based on age in employment and occupation, including through the development of public information campaigns and awareness-raising activities among workers, employers and their respective organizations. It asks the Government to provide information on the number of cases concerning discrimination on the ground of age in employment and occupation that have been dealt with by the labour inspectorate, the Ombudsperson and the courts, as well as the sanctions imposed and remedies granted. It further asks the Government to provide detailed information on the specific cases in which it was considered that age limits set in job vacancies were covered by the exceptions provided for in the national legislation.**



*Articles 2 and 3. Equality of opportunity and treatment between men and women.* Referring to its previous comments on occupational gender segregation in the labour market, the Committee notes from the Labour Force Survey (LFS) of the Hellenic Statistical Authority (ELSTAT) that in 2018, the employment rate for women slightly increased from 46.8 per cent in 2016 to 49.1 per cent, but remained 21 percentage points below that of men (70.1 per cent in 2018), being still one of the lowest employment rates for women among the European Union member states (EU average is 66.5 per cent), as highlighted by the GSEE. It notes that in 2018, the unemployment rate for women was still substantially higher than that for men (24.2 per cent and 15.4 per cent, respectively). The Committee further notes that women are still mainly concentrated in traditionally female-dominated sectors, such as education (74.4 per cent of women) and health and social services (71.6 per cent of women), as well as in low-paid jobs, representing 61.2 per cent of clerical support workers but only 26.8 per cent of senior officials and managers and 9.1 per cent of board members of the largest publicly listed companies in the European Union (Labour Force Survey of ELSTAT, and European Commission, 2019 Report on equality between men and women in the EU, paragraph 27). It further notes that, as highlighted by the European Commission and Eurostat, the gender gap in unpaid working time (the fact that women do most of the household chores, the care of family members and other unpaid work, which means they have less time to devote on paid employment) is one of the highest in the European Union which is reflected in the labour market by the fact that more than twice as many women as men are in part-time employment (13.2 per cent and 6 per cent, respectively in 2018). The Committee takes note of the adoption of the National Action Plan for Gender Equality (NAPGE) for 2016–2020 and more particularly of the Government's acknowledgement that: (i) women are still under-represented in specific sectors of the economy; (ii) employed women have low-paid and precarious jobs, with little room for promotion and are unable to develop professionally and educationally; and (iii) women still undertake the bulk of domestic work and spend periods away from the labour market more frequently than men. It notes that, as a result, the NAPGE sets specific actions aimed at, inter alia: (i) the enhancement of women's employment and in particular women's entrepreneurship; (ii) the promotion of gender equality in education and vocational training; (iii) ensuring the participation of women in decision-making centres; and (iv) the reconciliation of work and family responsibilities. While welcoming the adoption of the NAPGE, the Committee notes that, in April 2019, the UN Working Group on Discrimination Against Women in Law and in Practice highlighted the need for women's equal access to the labour market and improved conditions at work, and expressed specific concern at the absence of women in leadership roles (OHCHR, Press statement of 12 April 2019). The Committee further notes that in its 2018 report, the Ombudsperson indicated that the number of complaints on gender-based discrimination, especially at the workplace, increased, representing 57 per cent of the total number of the complaints received in 2018, and referred to several cases of discriminatory job vacancies seeking only men or women candidates. ***In light of persistent gender segregation in the labour market, the Committee asks the Government to take steps, including in collaboration with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the rights guaranteed by the Convention. It asks the Government to provide information on the proactive measures implemented, including within the framework of the National Action Plan for Gender Equality for 2016–20, to improve equality of opportunity and treatment between men and women in employment and occupation by effectively enhancing women's economic empowerment and access to the labour market, including to decision-making positions.***

*Equality of opportunity and treatment irrespective of race, colour or national extraction. Roma people.* Referring to its previous comments on the measures envisaged in the framework of the Action Plan for the implementation of the National Strategy for the Social Integration of Roma 2012–2020, the Committee notes the Government's indication that 12 strategies were implemented at regional level for the social integration of Roma people. The Government adds that, between 2013 and 2015, 883 Roma people benefited from local employment projects and 2,232 benefited from the services of the 27 support centres for Roma people and vulnerable groups. The Committee takes note of the adoption, in May 2016, of a project aimed at developing the National Centre for Social Solidarity, as a national platform for consultation and dialogue for the formulation and implementation of policies for the integration of Roma people. The Committee, however, notes that several UN bodies have expressed concern about the persistent stereotypes and discrimination affecting Roma people in access to employment and education, despite the efforts made by the Government, and have expressly recommended that the Government fully implement the National Strategy for the Integration of the Roma for 2012–2020 (OHCHR, Press statement of 12 April 2019; A/HRC/33/7, 8 July 2016, paragraph 135 and A/HRC/WG.6/25/GRC/2, 7 March 2016, paragraphs 16 and 76). ***The Committee asks the Government to strengthen its efforts to ensure that acts of discrimination against Roma people in employment and occupation are effectively prevented and addressed and to provide information on the impact of plans and programmes implemented to enhance equal access of Roma people to education, training and employment, including within the framework of the Strategy for the Integration of Roma up to 2020 or otherwise. It asks the Government to provide information on the activities undertaken to that end in collaboration with the National Centre for Social Solidarity, as well as statistical data disaggregated by sex, on the labour market situation of Roma people.***

*Migrant workers.* Taking into consideration the high number of migrants and refugees received by the country since 2015, the Committee notes that according to ELSTAT, for the first quarter of 2019, the unemployment rate of migrant workers was almost twice as high as that of national workers (32.3 per cent and 18.3 per cent, respectively). The Committee notes with **deep concern** that in its 2018 annual report published in April 2019, the Racist Violence Recording Network – RVRN (which is a network of non-governmental organizations at the initiative of the Greek National Commission for Human Rights and the United Nations High Commissioner for Refugees) refers to incidents perpetrated by employers against migrants and refugees, with victims suffering extreme labour exploitation and physical violence when they ask for their pay. It further notes that several UN treaty bodies have expressed concern about reported cases of migrants working in slavery-like conditions in the agricultural sector and that the Human Rights Council has recommended, in the context of the Universal Periodic Review (UPR), that the Government supervise the working conditions of migrant workers effectively (A/HRC/33/7, paragraph 135 and A/HRC/WG.6/25/GRC/2, paragraph 35). The Committee notes in that regard that, in March 2017, as highlighted by the GSEE, the European Court of Human Rights (ECtHR) handed down a decision where it considered that Bangladeshi workers were victims of trafficking for the purposes of labour exploitation in the agricultural sector (ECtHR Application No. 21884/15, *Chowdury and others v. Greece*, 30 March 2017). The Committee further notes that in its 2018 report, the Ombudsperson refers to a complaint made by 164 migrant workers, requesting that the labour inspectorate conduct field inspections to identify violations of labour laws in the agricultural sector in the region. The Committee notes that the Ombudsperson requested the Government to take appropriate measures to prevent trafficking for labour exploitation. In its report, the Ombudsperson highlights the unsatisfactory results of his numerous interventions since 2008 regarding the administration's inadequate inspection of migrant agricultural workers' working conditions in the region. The Committee notes that the Ombudsperson also mentions several cases of discrimination on the ground of national origin as a result of job vacancies expressly requesting Greek citizens or, in other cases, non-citizens. The Committee wishes to point out that under the Convention all migrant workers including those in irregular situation must be protected from discrimination in employment on the basis of the grounds set out in *Article 1(1)(a)* of the Convention (see 2012 General Survey, paragraph 778). ***The Committee urges the Government to take all necessary steps without delay to address effectively any cases of discrimination against men and women migrant workers in terms and conditions of employment, in particular as regards labour exploitation in the agricultural sector. It asks the Government to provide information on the concrete steps taken or envisaged to foster equality of opportunity and treatment in employment and occupation, irrespective of race, colour or national extraction, as well as on their impact. The Committee asks the Government to provide information on the number and nature of any complaints or cases of discrimination against migrant workers dealt with by the labour inspectorate, the Ombudsperson or by the courts, the sanctions imposed and remedies granted, as well as statistical data, disaggregated by sex, race, and national extraction, on the participation of migrant workers in the labour market.***

*General Observation of 2018.* Regarding the above issues and more generally, the Committee would like to draw the Government's attention to its General Observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the General Observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their

participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. **The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.**

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

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

### Observation 2019

The Committee notes the observations of the Greek General Confederation of Labour (GSEE) received on 31 August 2017 and 30 October 2019.

**Legislative developments.** The Committee notes with *interest* the adoption of Law No.4604/2019 on Substantive Gender Equality Preventing and Combating Gender-Based Violence of 12 June 2019 which encourages public and private enterprises to draft and implement "Equality Plans" with specific strategies and targets to prevent all forms of discrimination against women and provides that the General Secretariat for Family Policy and Gender Equality (GSFPGE) (previously the General Secretary for Gender Equality, GSGE) can award "Equality Labels" to them as a reward for their engagement in favour of equal treatment, including compliance with labour legislation on maternity protection, implementation of equality plans or other innovative measures to promote substantive gender equality (section 21). It further notes that the Law provides for the establishment of municipal and regional committees for gender equality to promote women's rights at local level (sections 6 and 7), as well as a National Council for Gender Equality (ESIF) under the auspices of the GSFPGE which aims at consulting relevant stakeholders in order to submit proposals to the GSFPGE for the adoption of policies and actions promoting gender equality, and assess and evaluate existing policies on gender equality (section 9). The Committee notes the enlarged scope of application of the Act which applies to persons who are employed or are applicants for employment in both the public and private sectors, irrespective of the form of employment and nature of services provided, as well as to freelance professional and persons in vocational training or applicant to vocational training (section 17). **The Committee asks the Government to provide information on the application of Law No.4604/2019 and more particularly of its sections 6, 7, 9, 17 and 21, on the specific situation of workers with family responsibilities in practice, for example: information on the activities related to issues pertinent to workers with family responsibilities undertaken by th municipal and regional committees for gender equality and the National Council for Gender Equality, providing samples of the provisions contained in the equality plans elaborated and implemented by employers, both in the public and in the private sectors, aiming at the reconciliation between work and family responsibilities; and information on equality labels awarded for initiatives pertinent to workers with family responsibilities.**

**Article 3 of the Convention. National policy. Protection from discrimination on the ground of family responsibilities.** The Committee takes note of the National Action Plan on Gender Equality (NAPGE) for 2016–2020, which sets as a priority the reconciliation of work and family life as well as a number of targeted actions concerning, inter alia, protection against discrimination on the grounds of pregnancy and maternity and the monitoring of complaints concerning discrimination on the ground of family responsibilities against men and women. Referring to its previous comments where it noted that working mothers returning from maternity leave have been offered part-time and rotation work, the Committee notes that according to the statistical information provided by the Government in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), since 2014 the number of women workers whose working arrangements have been converted to part-time and rotation employment, with or without their consent, has increased. The Committee observes that these statistics are not disaggregated by family status of women workers. It notes that, in its 2018 special report on equal treatment, the Ombudsman also highlighted the substantial number of reports relating to detrimental changes in working conditions imposed on women returning from maternity leave. The Committee also notes that, in April 2019, the United Nations (UN) Working Group on Discrimination Against Women in Law and Practice expressed concern about ongoing discrimination based on pregnancy and family responsibilities, indicating that while women who return to work following maternity leave are legally entitled to return to the same job or an equivalent one, with no less favourable working terms and conditions, in practice, a serious deficiency is observed in the application of the law relating to these matters, particularly in relation to women in high-ranking positions. Some working women face strict restrictions including the refusal to count the maternity leave period in the total length of service, negatively impacting their career development, and in some cases, women are totally excluded from exercising their rights relating to maternity or face a change in their working conditions, such as reduced hours, imposed by employers due to pregnancy and caring responsibilities (OHCHR, Press statement of 12 April 2019). **The Committee asks the Government to provide information on the measures implemented, in the framework of the National Action Plan on Gender Equality or otherwise, to facilitate the reconciliation between work and family life for men and women workers with family responsibilities, including by ensuring that workers with family responsibilities receive adequate protection against discrimination in practice. The Committee asks the Government to provide information on any measures taken to ensure the effective implementation of the relevant legislative provisions, including awareness-raising activities for employers, as well as their impact. It also asks the Government to provide information on any cases on discrimination in employment and occupation based on family responsibilities dealt with by the labour inspectors, the Ombudsman, or the courts, as well as on the sanctions imposed and remedies provided.**

**Article 5. Childcare and family services and facilities.** The Committee previously noted that, as a result of the action "Reconciliation of work and family life", implemented in the framework of the Operational Programme "Human Resources Development" 2007/2013, women workers received a voucher providing care services for babies, children and persons with disabilities, and requested the Government to consider providing such vouchers to men and women workers with family responsibilities on an equal footing. The Committee notes the Government's indication that such measure benefited almost 210,000 persons and that, as a result, the action will be continued for the period 2014–20, targeting women with low income. The Government adds that the beneficiaries of such action are mothers, as well as men or women who are granted the custody of children by court ruling. Concerning the number of childcare facilities, the Government states that 39 non-profit making baby-care centres and kindergartens are operating at the initiative of charitable organizations, churches and foundations; 1,270 profit-making baby-care centres and kindergartens are operating following a licence issued by the competent municipality; and 500 children's creative engagement centres (KDAP) are licensed and operating for children aged from 5 to 12 after school hours. The Government adds that, from 2011 to 2016, the number of children accommodated in such facilities doubled. The Committee however notes that the GSEE expresses concern at the continuous reduction of the available day-care facilities for children and dependent persons and refers in this regard to the 2016 Annual report of the National Commission for Human Rights which highlighted the continuous reduction of the already insufficient day-care facilities for children and dependent persons limiting women's ability to

take up employment or keeping them in jobs with reduced rights (NCHR, Annual report, 2016.). It further notes that the European Commission recently indicated that, as regards the availability of childcare facilities, the situation in Greece, which has a participation rate lower than 10 per cent, hardly improved at all (European Commission, 2019 Report on equality between men and women in the EU). Furthermore, it notes that, in December 2018, the GSFPGE highlighted the need for additional measures for the participation of children in preschool education, which will contribute to the reconciliation of family, personal and professional life of their parents, especially women (GSFPGE, E-bulletin No. 18, 17 December 2018). The Committee notes that, in April 2019, the UN Working Group on Discrimination Against Women in Law and Practice also considered that a major issue of concern for gender equality is the severe reduction of state-provided care services for children and dependent persons which intensifies women's unpaid care work, limiting their ability to access or remain into the labour market, Greece having very low rates of childcare and childcare being costly. **The Committee asks the Government to take appropriate steps in order to effectively ensure adequate, affordable and accessible childcare services and facilities, with a view to assisting men and women workers to reconcile work and family responsibilities. It further asks the Government to provide information on: (i) the extent of childcare, and family services available for men and women workers with family responsibilities; and (ii) the number of workers with family responsibilities making use of the existing childcare and family services and facilities.**

*Article 8. Protection against dismissal.* The Committee previously noted the rapid increase in the number of complaints relating to the dismissal of pregnant women, despite Act No. 3896/2010 (sections 16 and 20) and Act No. 3996/2011 which provide specific protection against unfair dismissal and extend to 18 months the period of time during which working mothers cannot be dismissed after their return from maternity leave. The Government indicates that, pursuant to section 52 of Law No. 4075/2012, dismissal on the ground of an application for granting parental leave is null and void. Noting the absence of information provided by the Government on the practical application of the above-mentioned legislative provisions, the Committee notes that the NAPGE 2016–2020 sets as specific actions: (i) the protection of pregnant women, including through the elimination of abuse of dismissal for a “significant reason”; (ii) the protection of women against discrimination on the grounds of pregnancy or maternity; and (iii) the monitoring of complaints concerning discrimination on the ground of family responsibilities against men and women. The Committee notes that, in its 2018 special report on equal treatment, the Ombudsman indicated that the substantial number of reports relating to the dismissal of pregnant women in the private sector demonstrates that despite enhanced legislative protection, the relevant prohibition has not been fully understood. **The Committee asks the Government to take appropriate steps to ensure effective protection of men and women workers against dismissal on the ground of family responsibilities, including by ensuring that effect is given in practice to sections 16 and 20 of Act No. 3896/2010 and Act No. 3996/2011. It asks the Government to provide information on any cases on dismissal of workers on the ground of family responsibilities dealt with by the labour inspectors, the Ombudsman, or the courts as well as the sanctions imposed and remedies granted.**

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

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

*Observation 2019*

*Article 5 of the Convention. Conditions of eligibility – disability pension.* In its previous comments, the Committee observed that some of the eligibility conditions for compensation in case of permanent incapacity laid down in Act No. LXXXIII of 1997 on mandatory healthcare benefits (Act No. LXXXIII of 1997) and Act No. CXCI of 2011 on benefits due to persons with reduced working capacities (Act No. CXCI of 2011) were not fully in line with the guiding principles contained in international standards on employment injury protection, including this Convention. Noting in particular the qualifying period of three years of insurance for entitlement to disability benefit set out in Act No. CXCI of 2011, the Committee asked the Government to indicate how it intended to give effect to the long established principle of international social security law, contained in this Convention, that benefits due in case of a work-related accident shall not be subjected to qualifying periods. In this respect, the Committee notes, as stated by the Government in its report, that injured workers who do not meet the conditions for eligibility to the disability pension are entitled to an accident allowance if they have a permanent health impairment of 13 per cent and over (section 57 of Act No. LXXXIII of 1997). The Committee further notes that the amount of accident allowance corresponds to 8, 10, 15 or 30 per cent of the monthly average income, depending on the degree of disablement of the injured worker (section 58(2) of Act No. LXXXIII of 1997), which is substantially lower than the amount of the disability pension, ranging from 40 to 70 per cent of the workers' average monthly wage (section 12 of Act No. CXCI of 2011), depending on his/her degree of disability. The Committee recalls that the objective of the Convention is to ensure that workers who suffer personal injury due to an industrial accident receive compensation to make up for the resulting loss of earning capacity they incur, based on their former earnings and their degree of disability. For such purpose, the Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22), Part I, calls for: (1) a periodical payment equivalent to two-thirds of the worker's annual earnings to be paid in the case of permanent total incapacity; and (2) a proportion thereof to be paid in case of partial permanent incapacity, calculated in reference to the reduction of earning power caused by the injury. The Committee observes that, while the level of disability pension is in line with this provision, the level of accident allowance set out in Act No. LXXXIII of 1997 is far from the recommended levels, resulting in amounts of compensation that are significantly lower than the previous earnings of the injured worker, even in cases where the degree of incapacity is such as to prevent the worker from earning income on the labour market. The Committee considers that compensation for total or substantial permanent incapacity in an amount or at a level that is not sufficient to allow an injured worker and his/her family to enjoy standards of living comparable to those they would have enjoyed if the accident hadn't occurred would not be in line with the objectives of the Convention. **On this basis, the Committee requests the Government to take the necessary measures to ensure that injured workers who suffer a permanent incapacity, total or substantial, due to a work-related accident and who do not fulfil the three year qualifying period for entitlement to a disability pension are provided with compensation at a level that is sufficient to enable the injured worker to sustain him/herself and his/her family in conditions comparable to those they enjoyed prior to the accident, and in any event, comparable to that of the disability pension.**

With respect to the condition that workers do not perform remunerated work, the Committee recalls that ILO standards do not preclude the victims of occupational accidents the possibility to use their remaining working capacity in order to complement their pensions with some earnings gained out of employment. Finally, with respect to the condition that prohibits the recipients of the employment injury benefit from receiving any other cash benefit, the Committee also recalls that the Convention permits the accumulation of employment injury benefits and other cash benefits. **The Committee once again hopes that the Government will adjust the qualifying conditions for entitlement to disability benefit, where the disability is due to an employment injury, with a view to ensuring full compliance with the Convention and requests the Government to keep it informed of any measures taken to that effect.**

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body has decided that member States for which this Convention is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. **The Committee therefore encourages the Government to follow-up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM tripartite working group and to consider ratifying Conventions Nos 121 or 102 (Part VI) as the most up-to-date instruments in this subject area.**

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



**C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)**
**Observation 2019**

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 (labour inspection) and 129 (labour inspection in agriculture) together.

*Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors.* The Committee notes that the Government states in its report, in response to its previous request concerning the functions of labour inspectors relating to the employment of migrant workers in an irregular situation, that: (i) the inspection activity concerning labour and social legislation, with the assistance of the Carabinieri forces, has in recent years paid particular attention to combating undeclared work, especially in the agricultural sector; (ii) although ascertaining whether third-country nationals have entered Italy legally does not fall within the specific remit of local inspectorates, inspection personnel – as investigative police officials – notify the public security authorities of the presence of any irregular migrant workers, as “illegal entry to and residence in the State territory” remains a criminal offense; (iii) the invalidity of the employment contract following failure to comply with necessary procedures, does not prejudice the rights of workers who do not hold residence permits as regards remuneration, contributions, working hours, health and safety and the principles of non-discrimination and protection of minors and working mothers; (iv) an Interministerial Decree of the Ministry of the Interior, Ministry of Labour and Social Policy, and the Ministry of Economy and Finance was issued in 2017 (on implementing the provisions of section 1(3) of Legislative Decree No. 109/2012) which provides that migrant workers are informed by labour inspectors of their rights to wages and insurance and social security contributions and of the means to assert those rights; and (v) an action was planned for 2016 to fight undeclared work with particular regard to agriculture. The Committee also notes the Government’s indication, in reply to its previous request, that information on the actions taken when regularizing the employment relationship of migrant workers in an irregular situation, as well as information on the rights that were granted to them following their detection – including the number of cases in which wages and social security contributions were paid for work performed, and compensation was provided for accidents at work – is not available, and will be sent in the next report.

The Committee recalls that, pursuant to *Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129*, the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. In this respect, the Committee recalls that in its 2017 General Survey on certain occupational safety and health instruments, paragraph 452, it indicated that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country. ***The Committee urges the Government to take additional measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, in accordance with Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. In this respect, it requests the Government to provide information on the manner in which it ensures that the cooperation with the public security authorities does not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers, in accordance with Article 3(2) of the Convention. The Committee requests the Government to provide further information on the implementation of the role of labour inspectors in informing migrant workers about their rights, including any available statistics on the application of the Interministerial Decree of 2017. Lastly, it once again requests the Government to provide information on the concrete actions taken when regularizing the employment relationship of migrant workers in an irregular situation, as well as information on the rights that were granted to them following their detection (such as the number of cases in which their outstanding wages and other benefits were fully paid and cases in which compensation was paid in the event of past work accidents).***

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 2019

The Committee notes the observations of the International Organisation of Employers (IOE), received on 29 August 2019, containing the Employers' statements made before the 2019 Conference Committee on the Application of Standards (hereinafter, the Conference Committee).

The Committee further notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, referring to the issues raised by the Committee below, as well as the observations received on 14 November 2019, alleging the imprisonment, on 16 October 2019, of Mr Erlan Baltabay, the leader of the Independent Oil and Energy Workers' Union. The Committee also notes the observations of the Federation of Trade Unions of Kazakhstan (FPRK) on the application of the Convention, received on 18 November 2019, expressing its concern over the situation of Mr. Baltabay. **Expressing its concern over this allegation, the Committee requests the Government to provide its comments thereon.**

The Committee recalls that it had previously noted with deep concern the ITUC 2018 allegation of assault and injuries suffered by the chairperson of a trade union of workers of the fuel and energy complex in the Karaganda region and urged the Government to investigate the matter without delay and to bring the perpetrators to justice. The Committee notes the information provided by the Government confirming the assault of the chairperson of the Trade Union of Workers in the Fuel and Energy Complex of Shakhinsk, Mr Dmitry Senyavsky, by unknown persons on 10 November 2018. The Government indicates that pre-trial proceedings were opened under section 293(2)(1) of the Criminal Code (disorderly conduct). According to a forensic medical report, Mr Senyavsky suffered mild damages to his health. However, the pre-trial investigation has been suspended pursuant to section 45(7)(1) of the Criminal Procedure Code (failure to identify the person who committed a crime) until new circumstances (evidence) come to light. **The Committee requests the Government to continue to provide information on the developments in this case.**

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

The Committee notes the discussion that took place in the Conference Committee in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee regretted the persistent lack of progress since the last discussion of the case in June 2017, in particular with regard to the serious obstacles to the establishment of trade unions without previous authorization in law and in practice, and the continued interference with the freedom of association of employers' organizations. The Conference Committee took note of the ILO high-level tripartite mission (HLTM) that took place in May 2018 and the resulting road map. The Committee notes that the Conference Committee called upon the Government to: (i) amend the provisions of the Law on Trade Unions 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) refrain from imposing restrictions on the right to hold elected positions in trade unions and the right to freedom of movement for engaging in legitimate trade union activities; (iii) ensure that the allegations of violence against trade union members are investigated, and where appropriate, impose dissuasive sanctions; (iv) review, in consultation with the social partners, the existing law and practice regarding re registration of trade unions with a view to overcoming the existing obstacles; (v) amend, in consultation with the most representative, free and independent employers' organizations, the provisions of the Law on the National Chamber of Entrepreneurs (NCE), and related regulations, 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; (vi) ensure that the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) and its affiliates enjoy the full autonomy and independence of a free and independent workers' organization, without any further delay, and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents; (vii) confirm the amendment to legislation to permit judges, firefighters and prison staff, who do not occupy a military rank, to form and join a workers' organization; (viii) adopt legislation to ensure that national workers' and employers' organizations are not prevented from receiving financial assistance or other assistance by international organizations. In this regard, provide information on the legal status and contents of its recommendation regarding the authorization of workers' and employers' organizations to receive financial assistance from international organizations; and (ix) implement the 2018 road map in consultation with the social partners as a matter of urgency. The Conference Committee decided to include its conclusions in a special paragraph of the report.

The Committee notes the Government's indication that a draft law to amend certain legislative acts has been submitted to Parliament and that a working group of the Mazhilis considered the draft on six occasions. The Committee takes note of a copy of the proposed amendments to the Law on Trade Unions (2014), the Labour Code (2015), the Law on the NCE, the Criminal Code, the Code of Criminal Procedure and the Law on Public Associations contained in this draft law.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Prison staff and firefighters.* The Committee duly notes the information provided by the Government regarding the right to unionize of firefighters and prison staff.

*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 noted with concern that the KNPRK affiliates were denied registration/re-registration, which ultimately led to its liquidation. The Committee recalls the Government's indication that a helpline regarding the issues of trade union registration and activities had been established at the level of the Ministry of Labour and Social Protection (MLSP) in June 2018, as per the road map. The Committee recalls, however, the ITUC allegation that the helpline lacked the capacity and mandate to fulfil its role. The ITUC referred in this respect to the denials to register organizations which previously formed the KNPRK. The Committee requested the Government to provide its comments thereon. Further in this respect, the Committee recalls that it had noted that several pieces of legislation regulated registration and that some trade unions were denied re-registration because their by-laws were found not to be in conformity with either one or all of the applicable laws. The Committee therefore requested the Government to engage with the social partners to review the difficulties identified by trade unions seeking registration with a view to finding appropriate measures, including legislative, to fully give effect to *Article 2* of the Convention and to ensure the right of workers to establish organizations without previous authorization.

The Committee notes the Government's indication that there are three national associations of trade unions in the country, which bring together around 3 million workers or half of all employees in Kazakhstan, 39 sectoral, 19 regional, 635 local and over 20,000 primary trade union organizations. All trade unions may be established without previous authorization. Primary trade unions do not need to register. If a trade union wishes to become a legal entity (which entitles it to open a bank account), it must register with the justice authorities. The latter has the following powers to determine the status of trade unions: (1) to verify compliance with the legislation of documents submitted for registration; and (2) to issue certificates of state registration. In the event that the registering authority identifies shortcomings, it issues a reasoned refusal, citing the applicable legislative provision, as per section 11 of the Law on the State Registration of Legal entities and the Official Registration of Branches and Representative Offices. If the trade union in question rectifies these shortcomings, it may re-submit its application for registration, appending all necessary documents. The Government points out that this can be done for an unlimited number of times. The Committee further notes the Government's indication that the MLSP and the Ministry of Justice have held a series of sessions for national federations of trade unions providing information on the registration procedure and seeking to identify problems that arise during registration. As a result, a working group has been set up to examine problems arising during registration and recommendations (step-by-step instructions) have been drawn up regarding trade union registration. These have been sent to trade unions for use in their work. The Government indicates that it has made every effort to provide guidance on registration to all trade unions and problems now occur only in isolated cases. While taking note of this information, the Committee **regrets** that the Government provides no information regarding the current situation of the KNPRK. **The Committee requests the Government to provide information on the current status of the KNPRK and reiterates in this respect the need to ensure that the KNPRK and its affiliates enjoy the full autonomy and independence of a free and**



**independent workers' organization, without any further delay, and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents.**

*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 with **interest** the Government's indication that the draft law, if adopted, would amend sections 11, 12, 13 and 14 of the Law on Trade Unions so as to remove the mandatory affiliation of trade unions to a higher-level association of trade unions. The Committee further notes the Government's indication that the draft law seeks to simplify the conditions for confirming the status of a trade union as a national, sectoral or regional organization by extending the time limit for this procedure from six months to one year. **The Committee expects that the legislative process will be concluded without further delay.**

The Committee notes that the draft law proposes to modify the threshold requirements to stipulate that "a sectoral trade union should have structural divisions, member organizations in a territory that includes more than half the number of regions, cities of republican significance and the capital. Workers of small businesses have the right to create a sectoral trade union if there are structural divisions, affiliates in a territory that includes more than half the number of regions, cities of republican significance and the capital". **The Committee requests the Government to provide information on all developments on this matter.**

*Law on the National Chamber of Entrepreneurs (NCE).* The Committee had previously urged the Government to amend the Law on the NCE and any other relevant legislation so as to ensure the full autonomy and independence of the free and independent employers' organizations. The Committee recalls, in particular, that the Law calls for the mandatory affiliation to the NCE (section 4(2)). The Committee had further noted the difficulties encountered by the Confederation of Employers of Republic of Kazakhstan (KRRK) in practice, which stem from the mandatory membership and the NCE monopoly, and in particular, 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. In this respect, the Committee had noted that there was an agreement to amend section 148(5) of the Labour Code so as to delete reference to the NCE's authority to represent employers in the social dialogue at the national, sectoral and regional levels and that the road map provided for the measures to be taken to address the above concerns culminating with the submission of the draft law to amend various pieces of legislation, including the Law on the NCE to Parliament in November 2018.

The Committee notes the Government's indication that the accreditation by the NCE is an internal procedure, which takes place on a voluntary basis. The Government stresses that this procedure is not an authorization procedure and does not prevent employers' organizations from operating. Moreover, the compulsory NCE membership is not imposed on associations. The Government reiterates that the proposed amendment to the Labour Code outlined above is reflected in the draft law and thus, the NCE will withdraw from the National Tripartite Commission on Social Partnership and the Regulation of Social and Labour Relations, sectoral commissions (20 sectors) and regional commissions (16 regions). Accordingly, the NCE will no longer be a signatory to the General Agreement between the Government and national associations of employers and workers, sectoral agreements and regional agreements. The Committee notes this proposed amendment with **interest**. The Committee further notes with **interest** the proposed amendment to section 9 of the Law on the NCE, which would exclude explicitly from the definition of the representative functions of the NCE the right to represent entrepreneurs in the system of social partnership as set out in the Labour Code. **The Committee expects that section 148(5) of the Labour Code as well as section 9 of the Law on the NCE will be amended as indicated without further delay thereby ensuring that the NCE and its structures at the national, sectoral and regional levels are no longer employers' representatives in social dialogue. The Committee requests the Government to provide information on all developments in this regard.**

The Committee recalls that it had also requested the Government to provide its comments on the 2018 observations of the KRRK which alleged that there was no real national dialogue regarding the implementation of the road map and that the implementation of the road map required a comprehensive approach, including modifications to the Entrepreneurship Code and beyond the proposed amendment to the Labour Code, which did not address the issue of financial and institutional dependency of employers' organizations from the NCE. **The Committee once again requests the Government to provide its comments thereon.**

*Article 3. Right of organizations to organize their activities and to formulate their programmes.* The Committee had previously requested the Government to provide information on the status of its proposal 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. The Committee had noted that 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).

The Committee notes the Government's indication that in July and August 2019, the Ministry carried out consultations with the relevant state bodies and national associations of workers and employers regarding additional measures that could be developed to ensure respect for freedom of association. The Committee notes that the proposed amendments transmitted by the Government aim at modifying section 176 of the Labour Code so as to explicitly refer to certain services (aviation, railway, automobile and public transport, and communication) as vital and where a strike is deemed illegal, unless the necessary minimum level of services, previously agreed upon by the workers' representatives and the local executive authorities, is maintained during a strike. **The Committee expects that the legislative process will be concluded without further delay and requests the Government to provide information on all developments in this regard.**

The Committee recalls that it had previously noted with concern 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, mass riots, etc.), up to three years of imprisonment. It recalled 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 requested the Government to take the necessary measures to amend section 402 of the Criminal Code to bring it into line with this principle.

The Committee notes the Government's indication that the Ministry undertook a series of consultations with the law enforcement authorities, as well as national associations of workers and employers regarding section 402 of the Criminal Code. Proposals to amend the penalties set out in section 402 of the Criminal Code were supported by the state bodies. The Committee notes that the proposed amendments intend to amend section 402 of the Criminal Code and

the relevant provisions of the Code of Criminal Procedure so as to categorize the deeds described in section 402 as delinquent acts (and no longer as criminal acts), and to lower the penalties (both fines and imprisonments) accordingly. The Committee notes, in particular, that the imprisonment for up to one year, and three years in specific cases described above, is to be replaced by an arrest for the duration of up to 50 days and two years of imprisonment, respectively. While welcoming the proposed amendments aimed at reducing the penalties, the Committee is nevertheless of the opinion that simply calling for a strike action, even one declared illegal by the courts, should not result in arrest for up to 50 days and that in general, sanctions should be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed. **The Committee expects that the additional amendments will be further reviewed taking into account the above and will be submitted to Parliament in the near future. The Committee requests the Government to provide information on all developments in this regard.**

*Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers.* The Committee had previously requested 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. The Committee recalls that the road map provides for the drafting of an explanatory note on this issue and on the procedure to follow for public distribution. Noting the Government's indication that a Recommendation on receiving financial assistance from international organizations had been drafted, the Committee requested the Government to provide a copy thereof, and to provide information on steps taken to adopt this Recommendation as a matter of law.

The Committee notes the Government's indication that the legislation in force does not impede the conduct by trade unions of activities (such as seminars on gender and youth policy, freedom of association, collective bargaining and resolution of industrial disputes) financed by international organizations. Financial assistance aimed at undermining the constitutional order, sovereignty and independence of the country is, however, forbidden. The Government indicates that between 2013 and 2017 the Federation of Trade Unions of the Republic of Kazakhstan held 101 international events (such as seminars, meetings, conferences and summer schools) jointly with the ILO and the ITUC. The Government further indicates that the legislation has been explained to all national associations of trade unions, which have also received a copy of the above-mentioned Recommendation. The Committee notes that the Recommendation outlines the Government's explanation above. The Committee welcomes that the draft law intends to amend the Law on Trade Unions by adding provisions on the right of trade unions to cooperate with international trade union organizations and, jointly with international organizations, to organize and conduct activities, as well as to carry out projects aimed at defending the rights and interests of workers in accordance with the legislation of Kazakhstan. **The Committee expects that the Law on Trade Unions will be amended without delay and requests the Government to provide information on the developments in this regard.**

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

### Observation 2019

The Committee previously noted that according to the Criminal Code of 3 July 2014, persons convicted for penal offences with penalties of correctional work or community service are under the obligation to perform labour (sections 42 and 43 of the Criminal Code). The Committee notes that the penalties of restriction of freedom and deprivation of liberty (provided for under sections 44 and 46 of the Criminal Code, respectively) also involve compulsory labour, under the conditions set out in the Executive Penal Code of 5 July 2014 (sections 63(2) and 104(2)(1)).

*Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. Criminal Code.* In its previous comments, the Committee noted a number of provisions of the Criminal Code, under the terms of which certain activities might be punished by sentences involving an obligation to perform labour in circumstances which are covered by the Convention. The provisions in question are as follows:

- section 174, which provides for penalties of restriction of freedom or deprivation of liberty for the incitement of social, national, gender-based, racial, class or religious discord;
- section 400, which establishes penalties such as a fine, correctional work, community work or remand in custody in case of violation of the procedure for organizing and holding meetings, rallies, pickets, street marches and demonstrations;
- section 404, which establishes penalties such as a fine, correctional work, restriction of freedom, deprivation of liberty, with forfeiture of the right to hold certain posts or to engage in certain activities in case of forming, leading and participation in activities of illegal social and other associations.

The Committee noted the Government's indication that, in 2015, there were 47 offences under section 174 of the Criminal Code, out of which three cases were submitted to court, and 44 cases were discontinued. The Committee requested the Government to ensure in practice that the provisions of sections 174, 400 and 404 of the Criminal Code were applied in a manner so as to ensure that no penalties involving compulsory labour were imposed as a punishment for holding or expressing political or ideological views.

The Government indicates in its report that, according to the Supreme Court of Kazakhstan, in the first half of 2019, 19 people were convicted under section 174 of the Criminal Code, including six who were sentenced to imprisonment and ten to restriction of freedom. The Government states that no cases were prosecuted under sections 400 and 404. The Committee notes the information in the compilation report prepared by the UN Office of the High Commissioner for Human Rights (OHCHR), for the Universal Periodic Review of November 2019, that the Special Rapporteur on terrorism observed that section 174 of the Criminal Code was the most commonly used against civil society activists, particularly against religious organizations (A/HRC/WG.6/34/KAZ/2, paragraph 25). The Committee also notes that, according to the 2017 Report "Defamation and Insult Laws in the OSCE Region: A Comparative Study" of the Organization for Security and Co-operation in Europe (OSCE), section 174 of the Criminal Code has been increasingly widely used against critical activists, including atheist writers (page 29). Moreover, section 174 of the Criminal Code has been applied in cases concerning criticism of policies pursued by the president of a foreign state (page 132).

Referring to its General Survey on the fundamental Conventions, 2012, paragraphs 302 and 303, the Committee points out that the range of activities which must be protected from punishment involving compulsory labour, under *Article 1(a)*, comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion. It also emphasizes that the Convention does not prohibit the application of penalties involving compulsory labour to persons who use violence, incite violence or prepare acts of violence. **The Committee therefore requests the Government to take the necessary measures to ensure that no penalties involving compulsory labour, including compulsory prison labour, correctional work or community service, are imposed in law and in practice, on persons who peacefully express views ideologically opposed to the established political, social or economic system, for example by clearly restricting the scope of sections 174, 400 and 404 of the Criminal Code to situations connected with the use of violence, or by suppressing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this regard, as well as information on the application in practice of the sections referred to above, specifying the number of prosecutions made under each provision, the grounds for prosecution, and the type of penalties imposed.**

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 2019*

The Committee notes the observations of the Kyrgyzstan Federation of Trade Unions of (KFTU), received on 28 August 2019. According to information from the KFTU, a new draft Law on Trade Unions, initiated by several members of Parliament, was adopted in the first reading. The KFTU considers that the draft violates the national Constitution and the Convention as it regulates in detail the internal functioning of unions. It further alleges acts of interference by the authorities during this process. ***The Committee requests the Government to provide its comments thereon.***

The Committee takes note of the draft Law on Trade Unions. It notes with **concern** that in addition to regulating in detail the internal functioning of unions by imposing excessive mandatory requirements for trade union by-laws and elections, it imposes a trade union monopoly. The Committee notes the Government's indication that it has prepared, for submission to Parliament, its comments on the draft Law outlining provisions, which, in its opinion, are not in conformity with national legislation and the Constitution and international labour standards. ***The Committee requests the Government to make every effort to ensure that the Law on Trade Unions when adopted is in full conformity with the Convention and to provide information on all developments in this regard. The Committee further requests the Government to ensure that the social partners are fully consulted in the process of adoption of legislation affecting their rights and interests.***

***The Committee reminds the Government of the possibility to avail itself of ILO technical assistance.***

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

## C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

### Observation 2019

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

*Articles 6, 10 and 16 of Convention No. 81 and Articles 8, 14 and 21 of Convention No. 129. Numbers of labour inspectors and inspection visits. Conditions of employment.* The Committee notes the Government's indication in its report, in reply to its previous request, that the number of labour inspectors working at the Department of Industrial Relations and Employment has increased to ten inspectors and that there is an ongoing procedure to recruit another inspector within that Department. The Government adds that two senior managers were recruited in late 2015 with the specific aim of inspecting and investigating claims of precarious work in companies providing services to government departments and public entities. The Committee notes that the Government has not provided a reply to its previous request as regards the conditions of service of labour inspectors. In this respect, the Committee notes the statement in the latest annual reports of the Department of Industrial Relations and Employment (available on the website of that entity) that there have been many changes in the staff of that Department. The Committee also notes with **concern** from these reports that there has been a decrease in the number of labour inspections between 2015 and 2018, with a particularly significant decrease in these numbers between 2017 and 2018. In fact, it notes from these statistics that there was a decrease from an average of 963 labour inspections in 2017 (resulting in the detection of about 285 violations in that year) to 154 labour inspections in 2018 (with 274 violations detected). The Committee notes from the annual reports of the Occupational Health and Safety Authority that between 2015 and 2018, the number of staff at the Occupational Health and Safety Authority rose from 31 to 35 (and the number of persons in professional and technical positions rose from 15 to 20), and the number of visits undertaken by the Occupational Health and Safety Authority rose from 2,139 in 2015 to 3,738 in 2018. **The Committee requests the Government to provide an explanation for the substantial decrease in the number of labour inspections undertaken by the Department of Industrial Relations and Employment, especially as regards the decrease between 2017 and 2018, and to indicate what measures it is taking or plans to take to increase the number of inspections in light of prior levels. Moreover, as the Government has not provided a reply in this respect and in view of the fluctuations in the staff of the Department of Industrial Relations and Employment, the Committee once again requests the Government to provide information on the conditions of service of labour inspectors and to indicate whether they are such as to attract and retain sufficient numbers and motivated staff. In addition, the Committee requests the Government to continue to provide information on the number of labour inspectors working at the Department of Industrial Relations and Employment and at the Occupational Health and Safety Authority, as well as the number of inspections undertaken by these entities.**

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

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

### Observation 2019

*Legislative developments.* The Committee previously requested the Government to provide information on the application of sections 3(A)(1) and 3(A)(2) of the Equal Treatment in Employment Regulations, subsequent to the amendment made in 2007, in particular as regards the manner in which "work of equal value" is determined and what is considered to be included as "remuneration". The Committee notes the Government's general indication, in its report, that "work of equal value" and "remuneration" are determined on a case by case basis by the Industrial Tribunal as these have not been defined by the current legislation. However, the Committee notes that, in its 2018 conclusions, the European Committee of Social Rights (ECSR) concluded that it has not been established that the principle of equal pay is effectively guaranteed in practice (ECSR, conclusions of 2018, p. 12). The Committee further notes that, as highlighted by the European Commission against Racism and Intolerance (ECRI) in its 2018 report, an Equality Bill is under preparation with the aim of presenting the equality legal framework in one comprehensive legislative Act. It further notes that a Human Rights and Equality Commission Bill, which would replace the current National Commission for the Promotion of Equality (NCPE), is also under preparation. Both bills were presented to Parliament in 2017 and are still before Parliament (CRI(2018)19, paragraphs 14 and 18). **The Committee reiterates its request to the Government to provide specific information on the practical application of sections 3(A)(1) and 3(A)(2) of the Equal Treatment in Employment Regulations, including by providing concrete examples on the manner in which the terms "work of equal value" and "remuneration" have been interpreted in practice, including by the Industrial Tribunal. It asks the Government to provide a copy of any administrative or judicial decisions concerning equal remuneration for men and women for work of equal value, as well as on any activities undertaken to raise public awareness of the principle of equal remuneration for men and women for work of equal value. The Committee trusts that the Government will seize every opportunity to ensure that any new legislation will explicitly define and give full expression to the principle of equal remuneration between men and women for work of equal value, in particular as regards the manner in which "work of equal value" is determined and what is considered to be included as "remuneration", and asks the Government to provide information on the status of the Equality Bill and the Human Rights and Equality Commission Bill, as well as a copy of both pieces of legislation once adopted.**

*Articles 1 and 2 of the Convention. Addressing the gender pay gap.* Referring to its previous comments, the Committee notes the Government's comments concerning the activities carried out by the NCPE in relation to the gender pay gap, such as the organization of a national Conference in 2015, the awarding of the "Equality Mark Certification" to 78 companies by August 2017, as well as awareness-raising activities such as the "PayMeEqually" campaign launched in November 2017. It also notes that several initiatives were implemented to enhance women's participation in decision-making positions. The Committee however notes that, according to the last available Labour Force Survey (LFS) published by the National Statistics Office, although the employment rate of women slightly increased from 59.1 per cent at the end of 2017, to 61.5 per cent at the end of 2018, it remained substantially lower than the employment rate of men (81.2 per cent and 82.3 per cent, respectively). It notes that women are still concentrated in low-paid jobs and continued to be underrepresented in decision-making positions, with only 6.2 per cent of women were employed as managers at the end of 2018, compared to 13.2 per cent of men. The Committee notes with **concern** that, according to the NCPE annual report, in 2017, women represented only 28.2 per cent of civil servants employed in the top five salary scales, compared to 71.8 per cent of men. It further notes that, according to the LFS, the average annual basic salary of women employed in the same economic activity or in the same occupational group as men was systematically substantially lower than that of men, and that the average pay differentials between men and women increased from 17.9 per cent at the end of 2017, to 18.9 per cent at the end of 2018 (Labour Force Survey (Q4/2018), tables 4 and 10–15, 25 March 2019). It notes that, according to Eurostat, the unadjusted gender pay gap increased from 9.7 per cent in 2013 to 12.2 per cent in 2017. **In light of the increasing gender pay gap, the Committee urges the Government to strengthen its efforts to take proactive measures, in collaboration with employers' and workers' organizations and the NCPE or any other relevant institution, to raise public awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. It asks the Government to provide information on the specific measures taken to reduce and address the gender pay gap, including by addressing occupational gender segregation and promoting women's access to high-level positions and higher-paid jobs and by encouraging more girls to take up Science, Technology, Engineering and Mathematics (STEM) subjects which can lead to better paid and more secure jobs. It asks the Government to continue to provide updated statistical information on the earnings of men and women in the public and private sectors, disaggregated by economic activity and**



**occupation.**

*Article 3. Objective job evaluation.* The Committee previously requested the Government to provide information on the measures taken to implement the recommendations of the NCPE regarding the adoption of a national system of objective job evaluation. Noting the Government's statement that it needs to be ensured that the principle of the Convention is implemented in practice to continue combating gender discrimination in employment, the Committee wishes to recall that no society is free from discrimination and constant efforts are needed to take action against it. Furthermore, the principle of equal remuneration for men and women for work of equal value requires the use of appropriate techniques for objective job evaluation to determine and compare the relative value of work, comparing factors such as skills, effort, responsibilities, and working conditions, using criteria that are free from gender bias. In particular, it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly (see General Survey of 2012 on the fundamental Conventions, paragraphs 675 and 701). **The Committee again asks the Government to indicate the measures taken to promote the development and use of job evaluation methods based on objective criteria in the private sector, in collaboration with employers' and workers' organizations, as well as in the public sector. It asks the Government to provide information on any progress made 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 2019**

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislative developments.* For a number of years, the Committee has been drawing the Government's attention to the absence of legislation or practical measures providing protection against discrimination on the ground of social origin. It notes the Government's indication in its report that the definition of "discriminatory treatment" in the Employment and Industrial Relations Act (EIRA), 2002, is non-exhaustive so that even though "social origin" is not specified, it could be a ground for discrimination under the Act. The Committee recalls that when legal provisions are adopted to give effect to the principle of the Convention, they should include at least all of the grounds set out in *Article 1(1)(a)* of the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 853). The Committee notes, however, that, as highlighted by the European Commission against Racism and Intolerance (ECRI) in its 2018 report, an Equality Bill is currently being prepared with the aim of introducing comprehensive legislation on discrimination in a single Act. It further notes that a Bill is also under preparation, which would replace the current National Commission for the Promotion of Equality (NCPE) with a Human Rights and Equality Commission. Both Bills were presented to Parliament in 2017, but are still in the process of enactment (CRI (2018)19, paragraphs 14 and 18). **The Committee hopes that the Government will take this opportunity to ensure that any new legislation explicitly prohibits direct and indirect discrimination in all aspects of employment and occupation, on at least all of the seven grounds set out in Article 1(1)(a) of the Convention, including social origin, while also ensuring that the additional grounds already enumerated in the national legislation are maintained in the new legislation. It asks the Government to provide information on the status of the Equality Bill and the Human Rights and Equality Commission Bill, and to provide a copy of both texts once adopted.**

*Articles 2 and 3. Equality of opportunity and treatment irrespective of race, colour or national extraction.* Referring to its previous comments on the initiatives taken to combat racial and ethnic discrimination, the Committee notes the Government's indication that several awareness-raising activities, targeting in particular the African minority in Malta, as well as training sessions have been carried out by the NCPE, mainly focusing on diversity in the workplace. It welcomes the adoption of the first National Migrant Integration Strategy 2017–20 and its accompanying Action Plan (Vision 2020), launched in December 2017, which provide for awareness-raising campaigns concerning the attributes and needs of most vulnerable and stereotyped migrants. They also include mainstreaming integration policies and measures targeted at migrants, in particular in sectors such as education and employment. The Committee notes the detailed statistical information provided by the Government on the number of participants in training programmes and employees in the public and private sectors, disaggregated by gender and nationality. It notes that, according to Eurostat, Malta recorded the highest rates of immigration in 2017 (46 immigrants per 1,000 persons). However, the Committee notes that, in the context of the Universal Periodic Review, the United Nations Human Rights Council issued recommendations regarding the strengthening of the Government's efforts to combat racial discrimination, in particular in access to employment, and the eradication of stereotypes and discrimination against migrants (A/HRC/40/17, 18 December 2018, paragraph 110). It further notes that the UN Special Rapporteur on the human rights of migrants also expresses concern at the exploitation by employers of migrants in an irregular situation, asylum seekers and refugees, who are made to work long hours and paid less than the minimum wage, without the required safety equipment or insurance, often in the construction, tourism and caregiving industries. According to the Special Rapporteur, such workers refrain from protesting and mobilizing due to their fear of being detected, detained and deported. The Special Rapporteur also observed that, while those contractors and subcontractors who are found to have exploited workers, including migrants, could be blacklisted and denied government contracts for a period of three years, sanctions against employers are rare in practice (A/HRC/29/36/Add.3, 12 May 2015, paragraphs 95 and 96). The Committee notes that in its 2018 report ECRI also expresses concern at the high number of complaints of extremely low wages and exploitation in unregistered employment, mostly among refugees (CRI(2018)19, paragraph 77). The Committee wishes to point out that under the Convention all migrant workers, including those in an irregular situation, must be protected from discrimination in employment on the basis of the grounds set out in *Article 1(1)(a)* of the Convention (see 2012 General Survey, paragraph 778). **The Committee urges the Government to take proactive measures to combat stereotypes and discrimination based on race, colour or national extraction, and to effectively ensure equality of opportunity and treatment of migrant workers, including those in an irregular situation, asylum seekers and refugees, in education, training, employment and occupation, pursuant to the Convention. It also asks the Government to provide specific information on the implementation of any programmes undertaken in that regard, both at the national and enterprise levels, including in the framework of the National Migrant Integration Strategy and Action Plan 2017–20, as well as a copy of any relevant studies and reports evaluating their impact. It further asks the Government to provide information on the number and nature of cases in which migrant workers, asylum-seekers and refugees have faced racial stereotyping and discrimination in education, training, employment and occupation which have been dealt with by the NCPE, the labour inspectorate or the courts, as well as on the remedies provided.**

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. **The**



## Malta

***Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

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

### Observation 2019

The Committee notes the joint observations of the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation for Professionals (VCP), received on 28 August 2018. **The Committee invites the Government to provide its comments in this respect.**

*Articles 1–5 of the Convention. Formation and implementation of education and training policies and cooperation with the social partners.* In response to the Committee's previous comment requesting information on activities undertaken in relation to the development of comprehensive and coordinated policies and programmes of vocational guidance and training, the Government refers to an amendment to the 2015 Education and Vocational Training Act. The amended Act focuses on increasing the macro-efficiency of upper secondary vocational training institutes and establishes a 70 per cent employment target for graduates within the first year after graduation. Additionally, according to a 2016 report by the European Centre for the Development of Vocational Training (CEDEFOP), the macro-effectivity policy for upper-secondary vocational education and training (VET) seeks to eliminate overlaps in the regional provision of VET and avoid competition between providers. The objective of the policy is to arrive at an optimal offer of qualifications at national and regional levels to meet labour market needs effectively and efficiently. The report notes that, in 2016, a review of the qualifications framework resulted in a 25 per cent reduction in the number of qualifications, on the basis that this reduction would make it easier for students to select a programme while increasing the efficiency of VET institutes. The Government further reports that, in 2016, the Ministry of Education launched a programme to improve: the quality of vocational guidance; the coordination of transitions from school to work; and the dissemination of VET information. In their observations, the workers' organizations maintain that the Government is moving away from lifelong learning programmes, leaving workers' organizations with the burden of providing such training for workers. They also refer to the 2017 *OECD Skills Strategy Diagnostic Report*, challenge 9, which states that all stakeholders in the Netherlands should broaden their skills policy dialogue in order to meet the needs of an increasingly diverse society, engaging with groups that are underperforming in the development, activation and use of skills. Additionally, the workers' organizations observe that the amended Act on Adult and Vocational Education has resulted in local governments outsourcing training from the private sector, as they are no longer required to use regional VET training centres. The workers' organizations maintain that, therefore, national public quality assurance for training in basic skills no longer exists. They add that, in 2014, a new subsidy scheme replaced the Wage Tax Relief Act, allowing employers to pay lower taxes for employees engaged in vocational training. In response to the Committee's previous comment concerning the 2012 Agreement on Accreditation of Prior Learning (APL), the Government reports that, in collaboration with the Labour Foundation, a new agreement was developed for the 2016–21 period. The APL consists of a labour market route and an education route. The labour market route caters to individuals who want to validate their knowledge and skills to help them find different employment opportunities. The education route is for individuals to validate their knowledge and skills in order to obtain a diploma in formal education by way of a shortened pathway. The Government reports that the social partners are working together to optimize the links between the labour market and educational routes. The Committee further notes the joint observations made by the FNV, CNV and VCP indicating that, in 2016, the Government no longer supported the labour market route which leads to training that does not support the needs of working people. The Committee also notes the workers' representatives mention of challenge 6 of the *OECD Skills Strategy Diagnostic Report* indicating that the Government should consider introducing stronger and more targeted public investment to boost participation in the APL. **The Committee requests the Government to provide a copy of the 2015 Education and Vocational Training Act, as well as information on progress made in achieving the 70 per cent target envisaged in the Act. The Committee further requests the Government to provide detailed information, including statistical information disaggregated by sex and age, on the impact of the labour and education routes of the APL, particularly with regard to the benefits of the training offered, such as licensing and enhanced qualifications for those in the education route and enhanced job prospects and job retention for participants in the labour route. The Committee also invites the Government to provide updated information on measures implemented to promote access to vocational education, guidance and lifelong learning on lasting employment for specific groups, particularly women, young persons and the long-term unemployed (Article 4 of the Convention). Additionally, the Committee requests the Government to continue to provide information on the manner in which the cooperation of employers' and workers' organizations is ensured in the formulation and implementation of vocational training policies and programmes.**

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

### Observation 2019

*Articles 2 and 9 of the Convention. Scope of application.* In its previous comments, the Committee had noted that, pursuant to article 37 of the Constitution, the conditions for exercising the right to union organization in “administrative bodies” (in addition to the police and the armed forces) can be limited by law and requested the Government to indicate what are the “administrative bodies” referred to in the Constitution and whether, and the extent to which, the law limits the right to organize of their workers. The Committee notes the Government’s indication that “administrative bodies” referred to in article 37 of the Constitution includes ministries, other state administration bodies (as independent state administration bodies or within ministries), and administrative organizations (set up for the performance of particular professional and other works requiring the application of scientific and expert methods). The Committee further notes that the Government emphasizes that freedom of association, apart from the general framework in the Constitution, is regulated by the Labour Law, which does not stipulate any limitation thereof. **Recalling that under the Convention only the armed forces and the police may be subject to limitations concerning the enjoyment of the guarantees provided by the Convention, as well as the need to ensure conformity of national constitutional provisions with the Convention, the Committee requests the Government to take the necessary measures to amend article 37 of the Constitution to eliminate the possibility for the law to restrict the conditions for the exercise of the right to trade union organization in administrative bodies.**

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments the Committee had noted that, under the Law on Public Enterprises and the Law on Employees in the Public Sector: (i) employees in the public sector are entitled to strike; (ii) employees in the public sector are obliged to provide minimum services taking into account the rights and interests of citizens and legal entities; and (iii) in accordance with the applicable laws and collective agreements, the head of the respective institution determines the performance of the institutional activities of public interest that are to be maintained during a strike, the manner in which the minimum service will be carried out and the number of employees that will provide services during the strike. In this respect, the Committee recalled that the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (ii) other services in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; (iii) in public services of fundamental importance; and (iv) to ensure the security of facilities and the maintenance of equipment. The Committee further recalled that minimum services imposed should meet at least two requirements: (i) must genuinely and exclusively be minimum services, that 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 (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The Committee welcomes the Government’s indication that it will take appropriate measures to ensure compliance with the Convention of the provisions in the Law on Public Enterprises and in the Law on Public Sector Employees. **The Committee requests the Government to take, in consultation with representative public employee and public employer organizations, any necessary measures to ensure the determination of minimum services in public enterprises conforms with the situations described above, and to provide further information concerning such determination in practice (in particular as to the types of activities, and percentage of employees in those activities, that have been affected by a determination of minimum services, as well as the possibility for employee organizations to participate in the definition of minimum services).**

In its preceding comment the Committee had requested the Government to amend section 38(7) of the Law on Primary Education and section 25(2) of the Law on Secondary Education, which oblige the school directors to provide for the realization of educational activities by replacing the striking employees when the educational activity is interrupted due to a strike. The Committee notes the Government’s indication that it started amending the articles concerned to align them with the Convention but observes that, subsequently, a new Law on Primary Education was published on 5 August 2019, including a similar provision to require the replacement of striking workers. Pursuant to section 50(7), of the new Law on Primary Education, in case of a suspension of the educational and pedagogical work due to strike action, the principal of the primary school, upon receiving a previous consent by the Mayor, and by the Minister in the case of state primary schools, shall be obliged to ensure the performance of the educational and pedagogical work by substituting the striking workers for the duration of the strike action. In this regard, the Committee must recall that teachers and the public education services may not be considered an essential service in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and that provisions allowing for the replacement of striking workers are a serious impediment to the legitimate exercise of the right to strike. **Regretting the lack of progress in this respect, the Committee once again requests the Government to amend the Law on Primary Education and the Law on Secondary Education, so as to remove the possibility of replacing striking workers and to enable workers in the primary and secondary education sectors to effectively exercise their right to strike, as well to provide a copy of the amended legal texts once adopted.**

*Legislative review.* With regard to the review process of the Law on Labour Relations, the Committee notes that the Government indicates that social partners were included from the very beginning and that in the course of drafting the new law attention shall be paid to its compliance with ILO Conventions. **The Committee expects that, in the context of the review of the Law on Labour Relations, the Government will take the necessary measures to bring its legislation into conformity with the Convention in line with the preceding comments and requests it to provide information on any developments, including a copy of the revised Law on Labour Relations once adopted.**

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

### Observation 2019

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee notes the information provided by the Government concerning the outcome of the “Promoting Social Dialogue” project implemented from October 2014 until April 2017. It notes that the Government indicates that: (i) training for collective bargaining skills was realized in the framework of this project in six sectors (transport, trade, tourism, agriculture, construction, and textile); (ii) 80 per cent of the planned measures from the Tripartite Action Plan for the promotion of collective bargaining were realized; and (iii) the new Labour Law and the special Law on Worker and Employer Organizations and Collective Bargaining are currently under preparation. **Noting that the mentioned draft laws gave rise to technical comments from the Office, the Committee requests the Government to inform on the adoption process of the new Labour Law and the special Law on Worker and Employer Organizations and Collective Bargaining**

*Collective bargaining in practice.* The Committee notes the statistical data provided by the Government concerning the number of collective agreements concluded in both the public and private sectors and the number of workers covered (respectively: 102,506 workers from six concluded collective agreements and 51,388 workers from ten concluded collective agreements). The Committee notes with *interest* that since 2014 and the beginning of the “Promoting Social Dialogue” project, the rate of workers covered by collective agreements moved from 21.8 per cent to 24.6 per cent and that the number of collective agreements signed at the enterprise level increased by 29 per cent. **The Committee invites the Government to keep promoting collective bargaining at all levels and to keep providing information on the number of collective agreements signed and the percentage of the workforce covered.**

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

### Observation 2019

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

*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.**



**C029 - Forced Labour Convention, 1930 (No. 29)****Observation 2019**

*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 2012, there were 509 DPRK workers brought legally to Poland. Reportedly they had to send back to the regime a large part of their legitimate earnings. 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 were being sent abroad by their Government to work under conditions that reportedly amount to forced labour, mainly in the mining, logging, textile and construction industries. The workers were 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 were under constant surveillance by security personnel and their freedom of movement was unduly restricted. Workers' passports were also confiscated by the same security agents.

The Committee noted the Government's statement that, 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. The Government further indicated that, in 2016 and 2017, no new visas had been issued to DPRK citizens. As of 1 January 2017, there were 400 citizens from DPRK in Poland with valid residence permits. The Committee also noted 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, such as the indirect payment of wages and confiscation of identification papers. The Committee requested 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 Government indicates in its report that it has ceased to issue new temporary residence permits for paid activities to the DPRK nationals. Consequently, section 100, paragraph 1, point 4 of the Act on Foreigners of 2013 and section 88(j), paragraph 2 of the Act on the Promotion of Employment and on Labour Market Institutions have been amended by the Act of 20 July 2017, and have accordingly been supplemented with the provisions providing for an additional reason for refusing temporary residence. The Government further indicates that it is currently implementing the United Nations Security Council Resolution 2397 of 22 December 2017, which allows for the return of the DPRK employees to their own country to be accelerated. The Government has already withdrawn the majority of the temporary residence permits for paid activities issued to the DPRK nationals in Poland. The Government states that, in March 2019, no more than 19 DPRK nationals resided in Poland, so that the number of the DPRK employees in Poland has dropped by approximately 95 per cent.

Furthermore, in recent years, as a result of the alleged infringements of the rights of the DPRK nationals who work in Poland and of the increasing number of foreigners employed in the territory, the frequency of inspections has been increased. The Border Guard Service has applied special monitoring to businesses employing DPRK citizens. The Government indicates that the inspections carried out did not show any indications that the DPRK nationals experienced forced labour. The Government communicates statistical data collected by the Border Guard Service, indicating that in 2018, 12,108 foreigners were found to be working illegally and 155 DPRK nationals were identified during inspections, among which 11 have been illegally employed, namely without valid residence permits or work permits, or without employment contracts or civil law contracts. From 1 January to 31 May 2019, 4,255 foreigners were found to be working illegally and 88 DPRK nationals were identified during inspections, among which 58 have been illegally employed. Additionally, the Committee notes the Government's information that labour inspectors detected a number of irregularities as a result of the inspections carried out in entities hiring foreigners, such as the failure to provide a foreigner with a contract translated into a language comprehensible to the foreigner before signature, or the failure to provide a foreigner with a copy of the work permit. The Border Guard Service also identified cases of non-payment of wages, or only partial payment thereof.

With regard to prevention measures, the Committee notes the Government's indication that the National Labour Inspectorate launched education and information campaigns, intended to raise awareness both among employers hiring foreigners regarding their obligations, and among foreigners working in Poland, regarding their rights. A hotline was made available to foreigners at the National Labour Inspectorate Consultancy Centre in February 2018, in order to increase understanding of the legislation on the employment of foreigners in Poland, in the Ukrainian and Russian languages. Over 3,400 foreigners have so far contacted the experts for advice, including Ukrainians, Belarusians, Georgians, Moldovans and Russians.

The Committee notes that, in its concluding observations of August 2019, the UN Committee against Torture reported that, despite the fact that a recent case was opened in Poland, involving 107 nationals of the DPRK, investigations appear to be ineffective and to lack impartiality, particularly with regard to interpreting services and formal proceedings for those investigated. ***While taking note of the measures taken by the Government, the Committee urges the Government to strengthen its efforts to prevent foreign migrants from falling victim to abusive practices and conditions that amount to the exaction of forced labour and to ensure their access to justice and remedies. The Committee also requests the Government to continue to supply information on the number of identified victims of abusive practices among migrant workers, and on the number of investigations, prosecutions and penalties imposed on the perpetrators.***

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

**C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)****Observation 2019**

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

The Committee takes note of the observations of the Independent and Self-Governing Trade Union "Solidarnosc" received on 19 August 2019, and the Government's reply to these observations received on 26 September 2019.

*Articles 2(1), 5(a), 6, 12(1) and 16 of Convention No. 81 and Articles 4, 6, 12, 16(1) and 21 of Convention No. 129. Coverage of workplaces by labour inspection. Restrictions on collaboration between labour inspection officials and other public institutions and on inspectors entering workplaces freely.* The Committee previously noted the limitations on the work of the labour inspectorate in the Act on Freedom of Economic Activity (AFEA) related to prior authorization by the inspection authority, as well as practical difficulties it posed in inspecting workplaces with multiple employers and the conduct of joint inspections. The Committee notes that the Entrepreneurs' Law, adopted in 2018, replaced the AFEA. It notes that pursuant to sections 48(1) and 54(1) of the Entrepreneurs' Law, prior notice to the entrepreneur is required and the undertaking of simultaneous controls of an entrepreneur's activities are not permitted, but that sections 48(11)-(1) and 54(1)-(8) state that these restrictions do not apply if the inspection is carried out on the basis of a ratified international agreement. With respect to authorization, the Committee takes note of the Government's indication that prior authorization by the inspection authority seeks to ensure transparency, reliability, validity, and legitimacy of public administrative bodies. It notes that pursuant to section 49(1) and (2) of the Entrepreneurs' Law, labour inspectors are empowered to conduct controls without prior presentation of the authorization from the inspection authority only in cases where control activities are necessary to prevent a crime or offence or securing evidence that such an offence has been committed, or when inspections are justified by a direct threat to life and health or environment, so long as such authorization is presented later to the entrepreneur within three days from the date of initiation of a control. Furthermore, the Committee notes that the Entrepreneurs' Law empowers inspectors to carry out control activities only during working hours (section 51(1)).

The Committee recalls that according to *Article 12* of Convention No. 81 and *Article 16* of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. **The Committee requests the Government to ensure that the Entrepreneurs' Law is amended to provide without qualification that labour inspectors with proper credentials are empowered to enter freely any workplace liable to inspection, in accordance with Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. Noting the absence of the information, the Committee once again requests the Government to indicate whether the conduct of joint inspections with other public authorities, including the State Sanitary Inspection and the Road Transport Inspectorate, is possible under the Entrepreneurs' Law.**

*Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors, and labour inspection activities for the protection of migrant workers in an irregular situation.* The Committee takes note of the Government's indication, in reply to its previous request, that the National Labour Inspectorate (NLI) supervises and controls compliance with legal provisions related to OSH and the legality of employment of both Polish citizens and migrant workers. The NLI's controls cover visas and other residence permits or work permits, the conclusion of written employment contracts or civil law contracts, and compliance with labour legislation. The NLI predominantly targets entities where migrant workers from outside the EU/EEA and Switzerland are engaged in work due to the high risk of irregularities. Controls are initiated based on the results of past controls, or referrals and complaints lodged by other institutions, including the Border Guard. The Government indicates that the NLI's controls can also be initiated based on complaints made by migrant workers, predominantly concerning non-payment of wages or the lack of written employment contracts. Moreover, the NLI's controls focus on temporary employment agencies, as well as employers sending workers to Poland and employers in Poland posting workers to other countries.

The Committee notes the statistics provided by the Government indicating that in 2018, a total of 7,817 controls were undertaken on the legality of employment of migrant workers which detected labour law violations related to the payment of wages and other benefits (related to 1,555 migrant workers), medical examinations (780 migrant workers), OSH trainings (1,370 migrant workers), records of working hours (662 migrant workers), and other working time regulations including rest periods (569 migrant workers). These inspections also detected a lack of work permits (related to 3,101 migrant workers), employers' non-adherence to the terms and conditions under work permits or residence permits (related to 1,087 migrant workers), and violations related to employers' obligation to conclude written contracts (916 migrant workers). The Government indicates that labour inspectors issued decisions or oral orders to correct these violations. It further indicates that infringements of labour law provisions result in notifications by the NLI to the social insurance institution, the head of the customs and revenue office, and the police or the Border Guard. The Committee also notes with **concern** that, according to the 2018 annual labour inspection report, available on the website of the NLI, the NLI performed 176 joint inspections with the Border Guard, and that the NLI sent 711 notifications to the Border Guard of cases regarding the illegal performance of work by migrant workers. The same report also indicates that the Chief Labour Inspector signed a new cooperation agreement with the Chief Border Guard to cope with a dramatic increase in the number of migrant workers from outside the EU.

The Committee notes that the observations of Solidarnosc refer to, among the new tasks undertaken by the inspectors, the increased control activity on the legality of employment of migrant workers. **The Committee urges the Government to take measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to provide for the protection of workers in accordance with Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. In this respect, it requests the Government to provide information on the manner in which it ensures that cooperation with other authorities such as the Border Guard does not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. The Committee also requests the Government to indicate the manner in which the NLI ensures the enforcement of employers' obligations with regard to the statutory rights of migrant workers, including those in an irregular situation. It also requests the Government to provide information on the orders issued by labour inspectors related to labour law violations (such as orders for establishing an employment contract, payment of overdue wages or other benefits resulting from their work) concerning migrant workers in an irregular situation, and the results obtained from such orders.**

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

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

### Observation 2019

*Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* The Committee previously noted that section 11(3) of the Labour Code and section 3(1) of the Equal Treatment Act of 3 December 2010 (ETA) do not prohibit discrimination on the grounds of colour and social origin, as required by *Article 1(1)(a)* of the Convention. The Committee notes the Government's statement in its report that the grounds of discrimination set out in the Labour Code are non-exhaustive and are listed only as examples. Noting that, according to their last annual reports, no case or complaint of discrimination on the grounds of colour or social origin has been dealt with by the labour inspectorate or the Commissioner for Human Rights (RPO), the Committee recalls that, where legislative provisions are adopted to give effect to the Convention, they should include at least all the grounds of discrimination set out in *Article 1(1)(a)* of the Convention. In that regard, it takes note of the adoption of the Labour Code Amendment Act of 16 May 2019, which entered into force on 7 September 2019, and more particularly of the amendments introduced in new section 11(3) of the Labour Code, but regrets that, despite its recommendations, the Government did not take this opportunity to include the grounds of colour and social origin in the list of the prohibited grounds of discrimination. **Noting the Government's indication concerning the elaboration of a new draft Labour Code in May 2018, the Committee hopes that the Government will take this opportunity to explicitly prohibit discrimination in employment and occupation based on at least all the grounds set out in Article 1(1)(a) of the Convention, while also ensuring that the additional grounds already enumerated in the Labour Code and the Equal Treatment Act currently in force are maintained in any new legislation. The Committee asks the Government to provide information on any progress made in this regard. In the meantime, it asks the Government to provide information on the application in practice of section 11(3) of the Labour Code and section 3(1) of the Equal Treatment Act, including on any relevant judicial decisions concerning discrimination on the grounds of colour and social origin.**

*Discrimination based on sex. Sexual harassment.* The Committee previously noted the difficulties faced by the labour inspectorate in examining sexual harassment complaints due to a lack of material evidence and the unwillingness of work colleagues to act as witnesses. While noting that the Government has not provided information on any measures taken or envisaged to improve the handling of sexual harassment complaints by labour inspectors, the Committee notes that 55 complaints of sexual harassment were dealt with by the labour inspectorate between 2014 and 2016 and observes that the figures have been increasing from 15 complaints in 2014 to 21 complaints in 2016. It further notes, from the statistical data provided by the Government, that 21 cases of sexual harassment were lodged with the courts from 2014–16. The Committee however notes that, in its 2017 annual report, the RPO highlights the lack of adequate tools for responding to sexual harassment and that this contributes to victims' unwillingness to report abuse. A study carried out by the RPO also shows that many female university students experience some form of sexual harassment during their studies, often by university employees. The Committee observes in this regard that, in December 2018, the United Nations Human Rights Council Independent Expert Group on the issue of discrimination against women in law and in practice expressed concern that the RPO, which has been very active in promoting and protecting women's rights, faces serious challenges of inadequate resources, as well as insufficient cooperation with some governmental bodies. The Committee further notes the amendments introduced to section

943(4) of the Labour Code, as a result of the Amendment Act of 16 May 2019, which now provides that an employee who has suffered from “bullying”, or has terminated an employment contract as a result of “bullying”, has the right to claim compensation from the employer in an amount not lower than the minimum wage, while previously the right to claim compensation was granted only to an employee who, as a result of “bullying”, terminated his or her employment contract. **The Committee asks the Government to: (i) explain what conduct is addressed under the term “bullying”; (ii) provide information on the application in practice, of section 943(4) of the Labour Code, as amended, and more particularly on any measures taken to prevent and address all forms of sexual harassment (both quid pro quo and hostile work environment) in education institutions and at workplaces; and (iii) increase public awareness of the issue of sexual harassment and “bullying”, as well as the legislative amendments introduced to the Labour Code, and procedures and mechanisms available for victims to seek redress, including by improving the handling of sexual harassment complaints by the labour inspectorate. It also asks the Government to continue providing information on the number of complaints concerning cases of sexual harassment and “bullying” in educational institutions and at workplaces dealt with by labour inspectors, the courts or any other competent authorities, specifying the penalties imposed and compensation awarded.**

*Articles 2 and 3. Equality of opportunity and treatment of men and women.* The Committee previously noted the measures taken and envisaged under the National Programme on Activities for Equal Treatment 2013–16 (KPDRT) to promote equal opportunities for men and women. It notes the Government’s indication that, in the framework of the KPDRT, a set of recommendations to enhance women careers in the science, technology, engineering and mathematics (STEM) area has been developed and several additional measures have been implemented to promote women’s representation in decision-making positions, in particular on the supervisory boards of state-owned companies and in large companies, such as the development of a guide for human resources departments in order to improve equality of opportunity for men and women at the workplace level. The Government adds that a similar project was implemented from 2016 to 2019 targeting 400 medium-sized companies, including individual business advice, training for employers and workers on equal treatment at work and relevant regulations, sharing of good practice and provision of free tools. The Committee also notes the measures developed in the framework of the KPDRT to facilitate the reconciliation of work and family responsibilities, such as the awareness-raising programme “Family and Work: It Pays!” (2016–17). It notes in that regard the amendments introduced to the Labour Code by the Act of 24 July 2015 allowing working parents to fully share part of maternity and parental leave (sections 180 and 186 of the Labour Code). The Committee however notes, that a team to evaluate the implementation of the KPDRT was established in April 2015 but that, as highlighted by the UN Human Rights Council Independent Expert Group on the issue of discrimination against women in law and in practice, the evaluation report had still not been published in December 2018. It further notes that, according to Eurostat, the employment rate of women increased slightly from 58.5 per cent in 2016 to 60.3 per cent in 2018, but remained substantially lower than the employment rate of men (74.3 per cent in 2018). The Committee observes that the gap between the employment rates of men and women has widened from 10.3 percentage points in 2016 to 14 percentage points in 2018. The Committee notes that, in their 2016 concluding observations, the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights (CESCR) both expressed concern at: (i) the prevalence of gender biases and stereotypes; (ii) the concentration of women in lower-paid sectors; and (iii) the under-representation of women in decision-making positions in the public and private sectors, and that they recommended that the Government combat gender stereotypes and segregation in the labour market (CCPR/C/POL/CO/7, 23 November 2016, paragraph 21, and E/C.12/POL/CO/6, 26 October 2016, paragraphs 14 and 15). It also notes that in its 2017 annual report, the RPO highlighted the need to enhance women’s education in the fields of technical sciences and engineering, as well as new technologies, and requested the Government to take this issue into consideration in the framework of the reform of vocational training and the counselling system in schools. The Committee notes from the data provided by the Government that the labour inspectorate dealt with 48 complaints alleging discrimination on the ground of sex when establishing or terminating the employment relationship and 46 complaints alleging discrimination on the ground of sex when setting remuneration for work or other conditions of employment, but observes that no information has been provided on the outcome of these complaints. **The Committee asks the Government to provide information on the measures taken to address effectively both horizontal and vertical segregation between men and women in the labour market, as well as gender stereotypes, including by improving the economic activity rate of women and enhancing their access to decision-making positions and their participation in non-traditional fields of study and occupations. Noting that the National Programme on Activities for Equal Treatment ended in 2016, it asks the Government to provide information on the development and implementation of any new national programme or action plan on equal treatment or gender equality, as well as statistical information on the distribution of men and women in employment, disaggregated by economic sector and occupation.**

*Equality of opportunity and treatment irrespective of race, colour and national extraction. Roma.* The Committee previously noted that, despite several measures aimed at improving access to education and increasing opportunities in the labour market, the Roma remained the most marginalized group in the labour market. The Committee notes with **interest** the adoption of the Programme for the Integration of the Roma Community for 2014–20, which explicitly recognizes education and employment promotion as priority areas. It notes the Government’s statement that 93 per cent of Roma children met the compulsory schooling obligation (compared to 84 per cent in 2013) and that several educational programmes for Roma parents and children were implemented in community and integration centres. The Government adds that several measures were undertaken to enhance the participation of Roma in the labour market and that, as a result, in 2016, 263 members of the Roma community were employed and 105 persons benefited from courses, internships and work placements to enhance their professional qualifications. The Committee notes the detailed statistical information provided by the Government on the situation of national and ethnic minorities in the labour market in 2015. While welcoming the measures taken, it notes with **concern** from the Government’s report that the unemployment rate of the Roma is still three times higher than the average unemployment rate of other minorities (15.5 per cent and 5.4 per cent, respectively), while the employment rate of Roma was only 13.4 per cent (compared with 46.5 per cent on average for all other minorities). The Committee further notes that, in its 2016 concluding observations, the CESCR expressed concern at persistent societal discrimination against the Roma, as well as the fact that, despite the decrease in their unemployment rate, the Roma continue to be disproportionately affected by unemployment. The CESCR also expressed concern at the low attendance rates of Roma children in primary school, their drop-out rates from high school, their over-representation in “special” schools and their under-representation in secondary and post-secondary education (E/C.12/POL/CO/6, 26 October 2016, paragraphs 12, 16, 17 and 55). The Committee also notes that, in the context of the Universal Periodic Review (UPR), the Committee of Ministers of the Council of Europe highlighted the persistent discrimination and difficulties faced by the Roma in different sectors, in particular, in employment and education, and indicated that the unemployment figures demonstrated that the various initiatives and schemes had not yielded tangible results and that a significant proportion of the Roma remained excluded from the labour market (A/HRC/WG.6/27/POL/3, 21 February 2017, paragraphs 74 and 75). **The Committee asks the Government to continue adopting measures to prevent and address stereotypes and discrimination based on race, colour or national extraction, and effectively ensure equality of opportunity and treatment of the Roma in employment and occupation, including by improving their employment rate and enhancing their access to a wide range of occupations in the labour market, as well as their participation in education and vocational training. It asks the Government to provide information on any measures adopted to that end, particularly in the framework of the Programme for the Integration of the Roma Community for 2014–20, as well as the results achieved, by providing a copy of any reports evaluating their impact. The Committee also asks the Government to continue providing information on the participation of the Roma and persons belonging to other ethnic minorities in education and the labour market, disaggregated by sex.**

*General observation of 2018.* With regard to the above issues, and in more general terms, the Committee would like to draw the Government’s attention to its general observation on discrimination based on race, colour and national extraction adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and

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coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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



# C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

## Observation 2019

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 (labour inspection) and 129 (labour inspection in agriculture) together.

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

*Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Status and conditions of service of labour inspectors.* The Committee takes note of the information provided by the Government in its report in response to the Committee's previous request concerning overtime. It also takes note of the Government's indication that the career of labour inspectors, as well as their development, is provided for in Decree-Law No. 112/2001, which establishes the legal framework and defines the structure of the inspection careers of the Public Administration. In addition to the base salary provided for in that Decree-Law, inspectors are also entitled to a supplement for the exercise of the inspection function amounting to 22.5 per cent of the base salary. The Committee notes the Government's indication that pursuant to this Decree-Law, a new career and remuneration system will be implemented for labour inspectors. In this regard, the Committee takes note that the UGT indicates that it has opposed the worsening of working conditions for labour inspectors and their lack of career prospects (which prevents progression). The union further indicates that, in 2018, a tripartite agreement was signed called "Combating precariousness and reducing labour segmentation and promoting greater dynamism in collective bargaining", which includes measures aimed at strengthening the conditions of service of the Working Conditions Authority (ACT). The UGT indicates that the agreement provides for measures to strengthen conditions of service at the ACT, the number of labour inspectors, the information systems of the ACT and mechanisms for hearing the views of the social partners. **The Committee requests the Government to continue to provide information on measures taken to improve the conditions of service of labour inspectors, including the results obtained through the implementation of the 2018 tripartite agreement. In this respect, it requests information on the measures taken, including within the context of the new career and remuneration system, to ensure that the remuneration levels and career prospects for labour inspectors are commensurate with that of other public officials exercising similar functions. In addition, the Committee requests information on stability of employment for labour inspectors (excluding management positions), including information on the proportion of inspectors with two years, five years, and more than eight years on the job.**

*Articles 9 and 10 of Convention No. 81 and Articles 11 and 14 of Convention No. 129. Technical experts and sufficient number of labour inspectors.* In its previous comments, the Committee welcomed the Government's indication that the ACT was in the process of recruiting 117 labour inspectors. The Committee takes note of the Government's indication that 117 labour inspectors mentioned previously are still in the process of being recruited and that the total number of labour inspectors has decreased from 314 in 2016 to 303 in 2017 (compared with 359 inspectors in 2012). It further notes the information available on the website of the Government that in September 2019, an additional 53 new inspectors were recruited, and that an additional 80 inspectors were scheduled to be recruited by the end of 2019. The Committee also notes the Government's indication that, in addition to the labour inspectors, the ACT has a total of 505 support staff (as compared to 514 in 2016) and that a number of competitions have been opened for the recruitment of senior technicians. In this regard, the Committee takes note that the CGTP–IN states that both the number of labour inspectors and support staff are still insufficient to ensure the effective exercise of the functions of the inspection service. The CGTP–IN also indicates that the ACT does not ensure the presence of at least one occupational safety and health technician in each regional office. **The Committee urges the Government to pursue its efforts to ensure the recruitment of a sufficient number of labour inspectors to secure the effective discharge of the duties of the inspectorate. It requests the Government to continue to provide information on the progress made in this respect and any training or other measures taken to facilitate the rapid integration of these new inspectors. Lastly, it requests the Government to provide information on the measures taken to ensure that duly qualified technical specialists are associated with the work of inspection.**

*Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Adequate frequency and thoroughness of inspections to secure compliance.* In response to its previous request concerning an inspection strategy pursued to achieve a satisfactory coverage of workplaces by sufficiently thorough labour inspection visits, the Committee notes the Government's indication that the definition of inspection priorities is based on: (i) the monitoring of undertakings where accidents at work have occurred or occupational diseases have been detected; and (ii) consideration of the number of workers potentially covered by the situations considered to be the most serious for their safety or physical and mental health. The Government indicates that the new information system will contribute to a more efficient and effective planning of the inspection action. The Government states that, in this process, the employers' and workers' organizations represented on the ACT's Consultative Board are consulted, having agreed on the Iberian Campaign for the Prevention of Accidents at Work (2016–18) and the National Campaign for Safety and Health for Temporary Workers (2016–18).

The Committee notes that the CGTP–IN asserts that the number of inspection visits has decreased dramatically over the years, as well as the number of workplaces visited and the number of workers covered. In this regard, the Committee notes the substantial decrease in the number of inspections (from 90,758 in 2011 to 37,482 in 2017), the number of undertakings inspected (from 80,159 in 2011 to 24,584 in 2017) and the number of workers covered (from 609,343 in 2011 to 317,838 in 2017). However, it also notes that over the same period, the number of violations detected increased from 17,607 in 2011 to 24,352 in 2017. In this regard, the Committee notes that the Government indicates that in 2013, there was a change in the statistical criteria for collecting information on the number of inspection visits and workplaces visited to avoid inflating the data by counting a visit to the same workplace that covered different subjects as a new visit. The Government further states that the data on the outcome of inspection visits indicate that there have been no significant changes in the number of penalties applied. **Noting these indications, and recalling the importance of ensuring that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, the Committee requests the Government to provide further information on the reasons for the decrease in the overall number of labour inspections undertaken and workers covered. In this respect, the Committee requests the Government to continue to provide information on the number of inspections that are planned versus the number that are reactive to complaints or accidents; the average or normal duration of planned versus reactive inspections; and the nature and number of violations identified and sanctions pursued for each type of inspection.**

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

C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Observation 2019

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

The Committee notes the observations made by the National Confederation of Trade Unions of Moldova (CNSM), received on 30 August 2019.

*Article 4 of Convention No. 81 and Article 7 of Convention No. 129. Supervision and control of a central authority. Occupational safety and health (OSH).* The Committee previously noted that Law No. 131 of 2012 on state control of entrepreneurial activities withdraws supervisory duties in the area of OSH from the State Labour Inspectorate (SLI) and transfers it to ten other sectoral agencies. In this respect, the Government indicated that a methodology on state control over entrepreneurial activities was being finalized. This methodology would be monitored and coordinated by the SLI and would ensure the application of standard rules in the planning and implementation of OSH inspections for the ten sectoral agencies. The Government also indicated that an e-learning training system would be developed and that the agencies were provided with forms for monthly reporting to the Ministry of Health, Labour and Social Protection. The Government further stated that most of these sectoral agencies had territorial offices and that inspectors with OSH responsibilities within the agencies would be provided with the status of civil servants. The Committee also noted that, according to the report of the ILO mission undertaken in 2017, the reform in the area of OSH had adversely impacted staff retention and the conditions of service of inspectors and that not all of the sectoral agencies with OSH responsibilities had yet been established, nor did they all have territorial or local units.

The Committee notes the observations of the CNSM that the labour inspection system does not meet the requirements of *Article 4* of Convention No. 81 and *Article 7* of Convention No. 129. Of the sectoral agencies, five are under the Ministry of the Economy, one is under the Ministry of Agriculture, Regional Development and the Environment, one is under the Ministry of Health, Labour and Social Protection, and two are independent bodies. The union states that the dispersion of inspection duties has diminished the efficiency of state control, especially in the field of OSH. In this respect, the CNSM indicates that the number of fatal work accidents rose from 33 in 2017 to 38 in 2018. The union also indicates that, due to failures in the field of OSH, it has repeatedly urged the Government to return to an integrated system of labour inspection, covering both labour relations and OSH. The union further states that there is a lack of qualified personnel within the sectoral agencies (with 31 inspectors across ten agencies) and that the lack of territorial coverage by some agencies leads to a lack of protection and in practice exempts certain workplaces from state supervision related to OSH.

The Committee notes the indication in the annual labour inspection report of 2018 that inspectors in the sectoral agencies responsible for OSH inspections provide reports to the SLI on inspections undertaken. The Committee recalls, however, that both the report of the ILO mission which visited the country in December 2017 and the Observation of this Committee published in 2019 emphasized the necessity for the Government to ensure coordination among the various sectoral agencies so as to ensure the implementation and monitoring of OSH inspection visits. In this respect, the Committee notes with **deep concern** that, according to the information in the 2018 report, only two of the ten sectoral agencies had conducted any OSH inspections (with 21 inspections carried out in the fourth quarter of 2018, detecting 26 violations). The number of inspectors in those agencies decreased from 36 in 2017 to 31 in 2018. The Committee further notes, once again, with **concern** an increase in the number of injured persons registered (503 in 2018, compared with 448 in 2017 and 371 in 2016 according to the annual labour inspection reports). Lastly, it notes an absence of information, in response to the Committee's previous request, concerning the development of a methodology for OSH inspections for the sectoral agencies or a training system for inspectors at these agencies. The Committee once again recalls the importance of ensuring that organizational changes to the labour inspection system 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. **Recalling prior concern expressed in this regard, the Committee urges the Government to take measures to ensure coordination among the various sectoral agencies, as well as between these agencies and the SLI, including steps taken to ensure monitoring by the SLI of the implementation of OSH inspection visits. It requests the Government to continue to provide information on the number of inspectors appointed in the sectoral agencies as well as the number of inspections undertaken by them, and to indicate the reasons why inspections were only carried out by two of the ten agencies in 2018. It once again requests the Government to provide information as to how the independence and impartiality of inspectors appointed in the sectoral agencies is ensured in light of their reporting to the management of the sectoral agencies, and as to specific measurable progress in providing all inspectors the status of civil servants. It urges the Government to take measures to ensure that inspectors are adequately trained, and to provide information on the measures taken in that respect, including the number of trainings held, the subjects covered, and the number of participants. The Committee further 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 and the measures taken to provide such inspectors with suitably equipped local offices (including in sectors covered by agencies currently without local offices) as well as the transport facilities necessary for the performance of their duties. Lastly, the Committee requests the Government to take measures to ensure that the information on the activities of OSH inspectors in the sectoral agencies, reflected in the annual report on labour inspection, addresses all subjects covered in Article 21 of Convention No. 81 and Article 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 a significant decline between 2012 and 2017 in the number of infringement reports submitted to courts (from 891 to 197 such reports). The Government indicated that this was due to a decrease in the number of entities subjected to inspection visits since the adoption of Law No. 131 in 2012. It indicated that in 2017, the Contravention Code was amended to introduce a section on violations of OSH provisions, and that it therefore expected the number of infringement reports produced by inspectors to increase in the future.

In this respect, the Committee takes due note of the information in the Government's report concerning the number of infringement reports submitted to court in 2018 (270 in 2018, rising from 197 in 2017 and 165 in 2016). The Government also provides information related to the payment of salary arrears paid following inspections. The Committee also notes the observations of the CNSM that although the Government's report contains information on the number of infringement reports, there is no information on their outcome following their referral to court. The CNSM also indicates that although 26 violations related to OSH were detected by inspectors at the sectoral agencies, infringement reports were not prepared. **The Committee requests the Government to continue to provide information on the number of infringement reports submitted to courts, and to indicate the number, if any, of infringement reports related to OSH violations following inspections by OSH inspectors in the sectoral agencies. In addition, and noting an absence of information in response to the Committee's previous request, it urges 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 5(b) of Convention No. 81 and Article 13 of Convention No. 129. Collaboration of the labour inspection services with employers and workers or their representatives.* The Committee notes the observations of the CNSM that the union has, in the context of the National Commission for Collective Consultations and Negotiations, systematically raised the issue of monitoring in the field of OSH, and the need to eliminate the contradictions between national legislation and the provisions of Conventions Nos 81 and 129. **The Committee once again requests the Government to provide information on the measures taken to promote effective dialogue with employers' and workers' organizations concerning labour inspection matters. It also requests the Government to provide information on the consultations undertaken in this respect in the National Commission for Collective Consultations and Negotiations, as well as the measures taken following such consultations.**

*Articles 10 and 11 of Convention No. 81 and Articles 14 and 15 of Convention No. 129. Human resources and material means for labour inspection.* The

Committee notes the information from the annual labour inspection reports for 2017 and 2018 that the budget for the SLI decreased substantially from 15,820,100 Moldovan lei (MDL) in 2017 to MDL9,475,800 in 2018. It also notes with **concern** a significant decrease in the number of inspectors, particularly in the territorial offices: from 109 inspectors in 2017 (22 in the central office and 87 in territorial offices) to 59 inspectors in 2018 (16 in the central office and 43 in territorial offices), and that the number of inspectors in the sectoral agencies decreased from 38 to 31 over the same period. **Recalling that the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate, the Committee requests the Government to provide information on the measures taken to ensure an adequate number of labour inspectors, as well as information on the reasons for the significant decrease in the number of inspectors. It also requests the Government to provide information on the measures taken to ensure that sufficient budgetary resources are allocated for the labour inspectorate.**

*Article 12 of Convention No. 81 and Article 16 of Convention No. 129. Unannounced inspection visits.* The Committee previously noted that, prior to its amendment in 2017, Law No. 131 required that notice of a scheduled inspection visit be sent at least five working days in advance (section 18(1) and (2)), but that there were specific limited circumstances under which an unannounced inspection could be undertaken irrespective of the established schedule (section 19). Particularly, pursuant to section 19(1) of the Law, unannounced controls were permitted in the following cases: (i) follow-up inspections (to verify that recommendations of a previous scheduled inspection had been implemented); and (ii) if reliable information (supported by evidence) was available indicating that there has been a violation of the legislation or a situation of emergency which represents an imminent danger to life and/or property or damage to the environment exceeding a specific monetary value. The Committee subsequently noted that Law No. 131 was amended in 2017 (by virtue of Law No. 185) to specifically exclude inspections undertaken in the area of labour relations and OSH from the requirements in section 18 to provide five days' notice. It requested information on the impact of these amendments.

The Committee notes the information in the Government's report that, in 2018, the number of unannounced inspections undertaken was 571, indicating a slight increase from 2017, when 545 such inspections were undertaken (compared with 1,317 unscheduled inspections undertaken in 2015 and 610 such inspections in 2016). The Committee also notes, however, that pursuant to Law No. 179 of 2018, section 19 of Law No. 131 has been amended to specify that complaints and petitions, including notifications or requests from other state inspection bodies, may only serve as grounds for an unannounced inspection if the circumstances or information provided reasonably indicates a possible infringement which will imminently cause damage and only if these circumstances and information are supported by proof. Complaints, petitions or other claims that do not require the immediate initiation of an unannounced control, may be taken into account in the next annual planning of controls.

The Committee notes the statement of the CNSM that the amendment of Law No. 131, by Law No. 179/2018, has made the carrying out of unannounced inspections impossible in practice. The union states that violations of labour law have therefore become very difficult to detect and combat. **With reference to its comments below on the application of Article 16 of Convention No. 81 and Article 21 of Convention No. 129, the Committee requests the Government to take measures 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 information on the impact of the amendments to section 19 of Law No. 131 on the activities of the labour inspectorate, including its capacity to make unannounced visits as required under both Conventions and its capacity to respond to complaints received. The Committee requests the Government to continue to provide information on the number of announced and unannounced inspections carried out by the SLI, and it urges the Government to provide the same information on announced and unannounced inspections for OSH inspections carried out by sectoral agencies. With respect to inspections carried out by both the SLI and the sectoral agencies, it once again requests the Government to indicate in detail the number of violations detected and specific sanctions imposed for both announced and unannounced inspections.**

*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 consequence of the receipt of a complaint.* The Committee previously noted that, prior to the 2017 amendments to Law No. 131, unscheduled inspections were only undertaken as a result of a complaint or to conduct an investigation following an accident. Following the 2017 amendments, unscheduled inspections could be undertaken in the field of labour relations and OSH. **Noting the further restrictions on unscheduled inspections introduced by Law No. 179/2018, the Committee requests the Government to provide information on measures taken to ensure that a sufficient number of inspections without prior notice are undertaken and 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. It requests the Government to indicate the number of inspections carried out without prior notice that were not undertaken as a result of a complaint or following the occurrence of an accident.**

*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 that certain provisions of Law No. 131 were not compatible with Article 16 of Convention No. 81 and Article 21 of Convention No. 129 on the carrying out of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. Section 3(g) of Law No. 131 provides that inspections can only be carried out when other means to verify compliance with the law have been exhausted. Pursuant to section 14, 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. Pursuant to sections 7 and 19, 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. In this respect, the Committee noted the Government's statement that, following the adoption of Law No. 131, the number of entities subjected to inspection visits decreased annually.

The Committee notes the new amendments to Law No. 131 by virtue of Law No. 179/2018 limiting the circumstances in which an inspection can be undertaken in response to a complaint (examined above). It also notes new requirements that consideration be given to carrying out monitoring through a documentation check only. Pursuant to section 4 of Law No. 131 in 2018 (as amended by section 9 of Law No. 179/2018), inspection bodies must consider, when carrying out scheduled or unscheduled inspections, the possibility of carrying out the monitoring by a direct request to the enterprise for documentation. Only in the case of insufficient documentation and information, or based on the type of inspection and risk analysis, will the inspection body carry out an inspection visit. Section 4 was further amended to state that an inspection visit may be carried out if an enterprise does not reply to the request for documentation within ten working days. If an inspection visit is undertaken, the inspector does not have the right to request documentation that has previously been presented. The Committee notes the Government's indication that the SLI (including its territorial subdivisions) carried out 2,317 inspection visits in 2018 covering 108,703 workers (compared with 3,135 inspections covering 111,500 workers in 2017 and 4,458 visits covering 146,900 workers in 2016), and that 21 OSH inspections were carried out. The Government further indicates that 233 controls based on documentation were undertaken in 2018 following the procedure introduced in Law No. 179/2018.

The Committee notes the observations of the CNSM that with the new restrictions, introduced by Law No. 179/2018, the control authority will automatically request documentation instead of carrying out an inspection. The union states that the Government did not indicate how many of the 233 documentation checks carried out in 2018 detected violations or if any infringement reports were subsequently prepared. **Noting with grave concern the new restrictions on the undertaking of labour inspections, the Committee once again 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. Lastly, the Committee requests the Government to take measures to ensure that labour inspectors with proper credentials shall be empowered to require**

**the production of any documents which are required to be kept by law, in accordance with Article 12(c)(ii) of Convention No. 81 and Article 16(c)(ii) of Convention No. 129.**

*Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Prompt legal or administrative proceedings.* The Committee previously noted that section 4(1) of Law No. 131 provides that inspections during the first three years of a business' operation shall be of a consultative nature. Section 5(4) provides that, in such cases, in the event of minor violations, the sanctions provided for in the Administrative Offence Law or other laws may not be applied, and section 5(5) provides that "restrictive measures" may not be applied in the event of severe violations. It noted the observations of the International Trade Union Confederation that these restrictions constituted a free pass for companies in the first three years of their operation by stipulating that sanctions cannot be applied in the case of minor offences for this period.

The Committee notes the statement of the CNSM that the prohibition on the application of restrictive measures is still in force, and that this is not in compliance with *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129.

Noting with **deep regret** the absence of a reply to its two previous requests on this matter, the Committee once again recalls that *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 provide that, with certain exceptions (which are not directed at new operations), persons who violate or neglect to observe 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 urges the Government to take prompt measures to ensure that labour inspectors are able to initiate or recommend immediate legal proceedings for both severe and minor violations during the first three years of a business's operation, and to provide information on steps taken in this regard. It once again 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 and minor violations detected by inspectors in the course of inspections in enterprises in the first three years of operation, the sanctions proposed by inspectors for severe violations, and the penalties ultimately applied.**

**Issues specifically concerning labour inspection in agriculture**

*Articles 9(3) and 21 of Convention No. 129. Sufficient number of inspections in agriculture and adequate training for labour inspectors in agriculture.* The Committee previously noted that the National Agency for Food Safety is in charge of OSH inspections in agriculture, and that labour inspectors at the Agency would carry out inspections in cooperation with other field inspectors of the Agency.

In this respect, the Committee notes with **concern** the indication in the 2018 annual labour inspection report that no OSH inspections were carried out by the National Agency for Food Safety in 2018. The Committee further notes the information in the 2018 report indicating a decrease in the number of inspections by the SLI (covering non-OSH issues): 363 inspections were conducted in agriculture, forestry and fisheries by the SLI in 2018 compared with 458 in 2017. **The Committee requests the Government to take the necessary measures to ensure that agricultural undertakings are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in conformity with Article 21 of Convention No. 129. It requests the Government to provide information on why the National Agency for Food Safety did not undertake any OSH inspections in 2018, and to provide information on the number of inspections undertaken in subsequent years. In addition, 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 for inspectors of the National Agency for Food Safety with OSH functions, the subjects covered in these programmes and the number of inspectors who participated in these programmes.**



**C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)****Observation 2019**

The Committee notes the Government's reply to the comments submitted by: (i) the International Trade Union Confederation (ITUC); and (ii) the Block of National Trade Unions (BNS); Confederation of Democratic Trade Unions of Romania (CSDR); and the National Trade Union Confederation (CNS "CARTEL ALFA"), referring to matters examined in this observation.

*Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. Threshold requirements.* The Committee notes that in its 2018 observations, the ITUC pointed out that section 3(2) of the Social Dialogue Act (SDA) imposes a minimum requirement of 15 founding members of the same company to set up a union. It further notes that according to the ITUC, this constitutes an insurmountable barrier in a country where the majority of employers are small and medium-sized enterprises, given that 92.5 per cent of all enterprises in Romania employ less than 15 workers and therefore this requirement denies over 1 million workers (42 per cent of the employees) the right to unionize. The Committee notes that in its observations, the CNS "CARTEL ALFA", the BNS and the CSDR raised similar concerns regarding the minimum membership requirements. Noting that the Government does not provide observations in this regard, the Committee recalls that, while it has found that the establishment of a minimum membership requirement in itself is not incompatible with the Convention, it has always been of the view that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. It also considers that this criterion should be assessed in relation to the level at which the organization is to be established (for example, at the industry or enterprise level) and the size of the enterprise (see the 2012 General Survey on the fundamental Conventions, paragraph 89). **The Committee requests the Government, in full consultation with the most representative workers and employers' organizations, to review the minimum membership criteria taking into consideration the high prevalence of small and medium-sized enterprises in the country so as to ensure the right of all workers to form and join the organizations of their own choosing. The Committee requests the Government to provide information on progress made in this respect.**

*Scope of the Convention. Retired workers.* The Committee had recalled that legislation should not prevent dismissed workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union. The Committee takes due note of the Government's information that the legislation does not prohibit the maintenance of the membership, or election in the union leadership, in case of dismissal or retirement since the trade union organization and its relations with its members are established by the trade union's statutes according to section 32 of Law No. 62/2011.

*Non-standard forms of work.* The Committee notes that in its 2018 observations, the ITUC points out that pursuant to section 3(1) of the SDA, day labourers, self-employed workers and workers engaged in atypical employment relationships, which constitute an estimated 25.5 per cent of the total employed population in Romania, are excluded from the scope of the SDA and therefore cannot exercise their trade union rights. **Recalling that all workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization, the Committee requests the Government to provide its comments thereon. It further invites the Government, in consultation with the social partners, to consider any necessary measures to ensure that workers engaged in non-standard forms of work can benefit from the trade union rights enshrined in the Convention.**

*Article 3. Right of workers' organizations to organize their administration, as well as their activities.* In its previous comments, the Committee had requested the Government to take measures to: (i) delete or amend section 2(2) of the SDA, according to which workers organizations shall not carry out political activities; and (ii) delete or amend section 26(2) of the SDA, in order to avoid excessive control of trade union finances (powers afforded to state administrative bodies to control the economic and financial activity and payment of debts to the state budget). **Noting from the Government's report that no progress has been achieved, the Committee requests the Government to take measures to delete or amend the above-mentioned sections of the SDA, so as to bring them into line with the Convention.**

With respect to the consultations undertaken at the National Tripartite Council for Social Dialogue with a view to amend the SDA, the Committee is addressing these issues in the context of the observations on Convention No. 98.

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 2019**

In its previous comments, the Committee had requested the Government to provide its comments on the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018, as well as on the observations of the Block National Trade Unions (BNS), the Confederation of Democratic Trade Unions of Romania (CSDR) and the National Trade Union Confederation (CNS 'CARTEL ALFA') received on 31 August 2018 referring to matters examined in this observation. **Noting that the Government has not yet provided its reply to the above-mentioned observations, the Committee reiterates its previous request.**

*Articles 1, 2 and 3 of the Convention. Effective protection against acts of anti-union discrimination and interference.* In its previous comments, the Committee requested the Government to specify the legal provisions that sanction acts of anti-union discrimination and to provide detailed information on the number of cases of anti-union discrimination and employers' interference, including the sanctions and remedies applied. The Committee notes that according to the information provided by the Government: (i) labour legislation does not include sanction regulations regarding acts of anti-union discrimination; however conflicts related to the conclusion or execution of individual labour contracts fall within the jurisdiction of the courts, which, upon request may decide according to section 253 of the Labour Code providing compensation in case of violation of rights; (ii) in 2016, Act No. 62 of 2011 concerning social dialogue (Social Dialogue Act, (SDA)) was amended in order to extend the protection against anti-union dismissal of trade union officers during and two years after the end of the mandate for reasons not related to the employee, for professional misconduct or for reasons connected with the fulfilment of the mandate (paragraph 11, section 10 of the SDA, as amended); (iii) the Constitutional Court considered that the protection granted to trade union officers was unconstitutional, that trade union immunity must operate exclusively in relation to trade union activity and in the face of an objective situation of dismissal not related to the employee, trade union officers have to be in an analogous situation with the other employees who do not exercise trade union functions (sentence No. 681/2016).

The Committee notes that section 10 of the SDA prohibits the amendment and termination of individual labour contracts for grounds regarding union membership, and that section 220(2) of the Labour Code provides protection specifically to trade union officers for anti-union acts (including dismissals) but that none of the mentioned provisions set specific sanctions in case of their violation. Noting, additionally, that section 253 of the Labour Code, referred to by the Government and applicable to any violation of labour rights, provides for compensation for the damage caused by the employer on the general basis of contract civil liability, the Committee observes therefore that the current legislation does not set specific sanctions applicable to acts of anti-union discrimination. In this regard, the Committee recalls that acts of anti-union discrimination should be subject to effective and dissuasive sanctions and that, to this end, they should be higher than those set for other violations of labour rights.

**In light of the above, the Committee requests the Government to take measures to amend the relevant legislation in order to guarantee that acts of anti-union discrimination are subject to specific and dissuasive sanctions. Furthermore, noting that the Constitutional Court considered that the trade union immunity must operate exclusively in relation to trade union activity, the Committee requests the Government to indicate how the**

**burden of proof is placed in cases of allegations of anti-union discrimination affecting trade union officers. It further requests the Government to provide detailed information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the sanctions and remedies applied in such cases.**

*Tripartite discussion of recent anti-union practices.* The Committee notes the Government's indication that the social partners were not interested in including in the agenda of the Tripartite National Council for Social Dialogue matters related to trade union discrimination. It also notes that in its 2018 observations the ITUC raised that trade unions are subjected to systematic anti-union discrimination, which undermines their existence and the protection they provide to workers. **The Committee, therefore, requests the Government to ensure that anti-union practices, and in particular preventive measures, will be subject to tripartite discussions. It requests the Government to provide information on any further progress in this regard.**

*Article 4. Promotion of collective bargaining. Negotiation with elected workers' representatives.* In its previous comments, the Committee had pointed out that section 135(1)(a) of the SDA (Act No. 62 of 10 May 2011; and subsequent amendments) raised problems of incompatibility with the Convention, because in cases where a non-representative union (pursuant to section 51 of the SDA, a union that does not have at least half plus one of the number of workers of the undertaking) was not affiliated to a representative sectoral federation, the negotiation of a collective agreement *erga omnes* could be carried out exclusively by elected workers' representatives, thus rendering obsolete the right of unions considered as non-representative to negotiate on behalf of their own members. It had recalled in this regard that collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level, and that appropriate measures should be taken, wherever necessary, to ensure that the existence of elected workers' representatives is not used to undermine the position of the workers' organizations concerned. The Committee notes the Government's indication that: (i) the SDA was not enacted with an aim of favouring collective bargaining with employees' representatives; and (ii) section 134(2) of the SDA, was amended in 2016 as follows: "if the union is not representative, representation is made by the federation to which the union is affiliated, if the federation is representative at the level of the sector to which the unit belongs; where no unions are constituted by the elected representatives of the employees" (Law No. 1/2016). The Committee further notes that in their 2018 observations, the BNS, the CSDR and the CNS 'CARTEL ALFA' alleged that elected workers' representatives have been used to undermine negotiations efforts of representative unions and that in 2017 more than 92.5 per cent of collective agreements in the private sector were negotiated and signed by elected workers' representatives. It further notes that according to the statistics provided by the ITUC, while in 2010 all collective agreements were negotiated and signed by trade unions, in 2017 only 14 per cent of all collective agreements concluded were signed by trade unions, and 86 per cent were concluded by elected workers' representatives. The Committee recalls that, since, under the terms of the Convention, the right of collective bargaining lies with workers' organizations at all levels, and with the 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 (see the 2012 General Survey on the fundamental Conventions, paragraph 239). **While taking due note of the amendment of section 134(2) of the SDA, the Committee requests the Government to clarify whether the negotiating powers granted to the elected workers' representatives exist only when there is no trade union. Further noting with concern the statistics submitted by the national unions and the ITUC, the Committee requests the Government to provide its comments thereon.**

*Representativeness criteria and coverage of collective bargaining.* The Committee recalls that it had previously noted that section 51 of the SDA which sets out the representativeness criteria at enterprise level (union membership of at least 50 per cent plus one of the workers of the enterprise) required to be amended so as to ensure the possibility for unions that had not secured the absolute majority requested by that provision to be able to bargain collectively. The Committee had further noted that the SDA (2011) had resulted in a drastic decrease in the number of collective agreements concluded at the enterprise level and at the sectoral level. The Committee notes the Government's information that bipartite and tripartite consultations on collective bargaining procedures have not led to an agreement between the social partners. The Government further indicates that upon its request for technical assistance, the Office drafted a technical memorandum regarding the revision of the SDA and that the comments of the Office are currently under parliamentary discussion. As to the number of collective agreements concluded, the Committee notes that according to the Government: (i) at the enterprise level, in 2013, there were 8,367 collective agreements, while in 2016, there were 9,366 collective agreements (approximately 33 per cent of the workers); and (ii) at sectoral level, in 2014, there were three contracts, while in 2016 there were none. On the other hand, the Committee notes that according to the ITUC, the BNS, the CSDR and the CNS 'CARTEL ALFA': (i) the SDA severely undermined the capacity of first-level unions to represent workers in collective bargaining – the representativeness criteria have only been met in nine out of the 30 sectors, which are thus the only ones represented by trade unions; (ii) trade unions have not been consulted on the proposed amendments to the SDA and the Government did not take into consideration the joint proposal made by the organizations above. The Committee further notes that, according to the European Foundation of the Improvement of Living Conditions and Working Conditions (EUROFOUND), the 2011 SDA led to the concentration of collective bargaining at company level and collective bargaining coverage has declined from almost 100 per cent in 2010 to approximately 35 per cent in 2013 and only 15 per cent (952,911 employees) in 2017. **In view of the above and recalling its previous comments, the Committee requests the Government to take, in full consultation with the most representative workers' and employers' organizations, all the necessary measures to amend the representativeness thresholds so as to effectively promote collective bargaining at all levels.**

*Articles 4 and 6. Collective bargaining in the public sector. Public servants not engaged in the administration of the State.* The Committee had previously noted that salaries under Act No. 284/2010 on Unitary Salaries of the Staff Paid from the Public Budget were based on a legislatively established coefficient and had requested the Government to ensure that the wages of all public servants not engaged in the administration of the State are not excluded from the scope of the collective bargaining. The Committee notes the Government's indications that the Convention does not explicitly provide for the obligation of State parties to bargain collectively on wages, that the fixing of wages shall be at the discretion of national practice, and that a new salary law implemented in 2017 (Law No. 153/2017-Unique Pay Law), in consultation with social partners, set up an agreed mechanism for wage increases of staff paid by the State budget beginning in 2020. With respect to the discussions regarding the draft amendment to Act No. 284/2010, the Government indicates that despite the consultations carried out between 2014–16 by the bipartite and tripartite working groups, no consensus was reached in that regard. The Committee recalls that, in accordance with the Convention, public servants not engaged in the administration of the State should be able to negotiate their wage conditions collectively and that mere consultation with the unions concerned is not sufficient to meet the requirements of the Convention in this respect. However, the special characteristics of the public service described above require some flexibility, particularly in view of the need for the state budget to be approved by Parliament (see the 2012 General Survey on the fundamental Conventions, paragraph 219). **Highlighting once again the need to ensure that wages are included in the scope of the collective bargaining for all public servants not engaged in the administration of the State, the Committee once again requests the Government to take the necessary measures, in full consultation with the social partners and, if necessary, with technical assistance from the Office, to bring national law and practice into conformity with Article 4 of the Convention, fixing for example upper and lower limits for the wage negotiations with the trade unions concerned.**

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

### Observation 2019

The Committee notes the observations made by the Confederation of Labour of Russia (KTR), received on 26 September 2019. **The Committee requests the Government to provide its comments in this respect.**

*Articles 3(1), 6, 10 and 16 of the Convention. Number of labour inspectors and coverage of workplaces by labour inspection visits.* In its previous comments, the Committee observed that the number of labour inspectors had continuously decreased over a number of years from 2,680 to 2,102 between 2012 and 2016. It also noted from the 2016 report of the Federal Service of Labour and Employment (Rostrud) that the number of labour inspectors was insufficient to achieve sufficient coverage of workplaces by labour inspection visits, which often resulted in the verification and control of documents from the offices of the Rostrud rather than the conduct of actual labour inspection visits in workplaces. The Committee notes with **concern** from the information provided by the Government in its report that the actual number of labour inspectors continued to decrease to 1,835 inspectors in 2018. The Committee notes from the 2018 report of the Rostrud that the turnover of staff affects the efficiency of labour inspection activities. **The Committee urges the Government to take the necessary measures to guarantee the recruitment of an adequate number of labour inspectors to ensure that workplaces are inspected as often and as thoroughly as is necessary to enable the effective application of the relevant legal provisions. It requests the Government to continue to provide information on the number of labour inspectors. The Committee also requests information on the conditions of service of labour inspectors (including salary, benefits, and career prospects) in comparison to public servants exercising similar functions within other government services (such as tax inspectors and the police) as well as on the reasons for the high attrition rate of labour inspectors.**

*Articles 7, 17 and 18. Enforcement of labour law provisions.* In its previous comment, the Committee noted a disparity between the number of cases reported by the labour inspectorate, the number of investigations initiated and the number of convictions. It noted the Government's indication that criminal cases were often not pursued as criminal intent could not be established. With respect to administrative cases, the Committee noted the Government's indication that they were sometimes not pursued due to the lack or incomplete nature of documents in non-compliance reports prepared by the labour inspectorate and that decisions on the closure of administrative cases were often communicated too late for the labour inspectorate to submit appeals within the prescribed time limits.

The Committee notes that, based on the information provided by the Government, there is still a significant discrepancy between the number of files sent to the prosecutor's office by the federal labour inspectorate (7,580) and the number of criminal cases instituted (518), and that the Government's report is silent on the number of actual convictions. The Committee also notes that there have been a significant number of cancellations of acts of inspections, orders, decrees, conclusions and other decisions of labour inspectors by the judicial authorities in 2018 (1,206). **The Committee once again requests the Government to take the necessary measures to ensure the effective enforcement of the legal provisions enforceable by labour inspectors. It once again requests the Government to provide information on the concrete measures taken to address the deficiencies identified, such as training for labour inspectors on the establishment and completion of non-compliance reports, including the collection of the necessary evidence; the improvement of communication and coordination activities with the judiciary on the required evidence to establish and effectively prosecute labour law violations, as well as the need for timely communication of the outcome of cases to the labour inspectorate. The Committee requests the Government to provide concrete statistics on the administrative and criminal cases reported by the labour inspectorate, including the relevant legal provisions, the investigations and prosecutions initiated, and the penalties imposed as a result. The Committee also requests information on the reasons for the significant number of cancellations of the decisions taken by labour inspectors.**

*Articles 12 and 16. Labour inspection powers and prerogatives.* In its previous comment, the Committee noted that section 357 of the Labour Code only gives labour inspectors the power to interview employers (and not workers) and that Federal Law No. 294-FZ, the Labour Code and Regulation No. 875 provide for numerous restrictions on the powers of labour inspectors, including the free initiative of labour inspectors to undertake inspections without prior notice (sections 9(12) and 10(16) of Law No. 294-FZ), and the free access of labour inspectors to workplaces (without an order from a higher authority) at any hour of the day or night (sections 10(5) and 18(4) of Law No. 294-FZ). It also noted limitations with regard to the grounds on which unscheduled inspection visits may be undertaken (section 360 of the Labour Code, section 10(2) of Law No. 294-FZ and section 10 of Regulation No. 875). The Committee further noted that pursuant to section 19(6)(1) and (2) of the Code of Administrative Offenses, labour inspectors may incur administrative liability where they fail to observe certain of these restrictions, for example where they undertake labour inspections on grounds other than those permitted in law. It urged the Government to take the necessary measures to bring these legislative Acts into compliance with *Articles 12 and 16* of the Convention.

The Committee notes the Government's reference to the introduction of a risk-based approach in the work of the labour inspection services. In this respect, it notes that resolution No. 197 of February 2017 on the introduction of changes to certain acts of the Russian Federation, provides that depending on the assessment of risks, planned inspections may not be carried out more often than: (i) once every two years for workplaces considered to be high-risk; (ii) once every three years for workplaces considered to have a significant risk; (iii) once every five years for workplaces considered to have medium risk; and (iv) once in six years for workplaces to be of moderate risk. Moreover, for workplaces considered to have a low level of risk, planned inspections are not permitted. In this respect, the Committee notes that pursuant to the amendments introduced by Federal Law No. 480-FZ of 25 December of 2018 to the Federal Law No. 294-FZ, inspections cannot be scheduled for low-risk small and medium enterprises. The Committee also notes that in 2018, 37 cases were brought under section 19(6)(1) against officials of the state labour inspectorates for violating the requirements regarding the procedure for state supervision. **Recalling and emphasizing the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee once again urges the Government to take the necessary measures to bring the national legislation into conformity with Articles 12 and 16 of the Convention. Particularly, it urges the Government to ensure that labour inspectors are empowered to: (i) make visits without previous notice, in line with Article 12(1)(a) and (b) of the Convention; (ii) to interrogate both employers and staff, in accordance with Article 12(1)(c)(i); and (iii) 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 accordance with Article 16. The Committee also requests the Government to provide information on the impact of the risk-based inspection system on the coverage of workplaces by labour inspection. In this regard, it requests that the Government provide statistics on the number of labour inspections undertaken in each year since the implementation of this system, indicating the number of inspections in small, medium-sized and large enterprises. The Committee requests the Government to provide further information on the cases brought under section 19(6)(1) of the Code on Administrative Offenses, indicating the requirements of the legislation on state control that were violated, particularly specifying violations related to undertaking labour inspections on grounds other than those permitted in law, and any penalties assessed against inspectors based on such violations.**

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 2020.]**



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

### Observation 2019

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2020, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

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

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

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

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

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

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

### Observation 2019

The Committee notes with **deep concern** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2020, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

*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.*



## C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

### Observation 2019

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 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) on the application of these Conventions, received on 29 August and 1 September 2019, respectively, and the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS), the Trade Union Confederation "Nezavisnost", and the Serbian Association of Employers (SAE), communicated with the Government's report on the application of these Conventions.

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

*Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Free entry of labour inspectors to workplaces without prior notice.* The Committee previously noted restrictions on the powers of inspectors in the Law on Inspection Oversight No. 36/15: sections 16 and 17 of the Law require three days prior notice for most inspections and a written inspection warrant (except in emergency situations) specifying, among other things, the purpose of the inspection and its duration. Section 16 further provides that if, during the course of the inspection, an inspector uncovers an instance of non-compliance that exceeds the inspection warrant, the inspector must apply for an addendum to the warrant. Pursuant to sections 49 and 60, inspectors shall be held personally accountable for the actions undertaken in the course of their duties and may receive a fine if they undertake inspections without prior notice.

The Committee notes the 2019 conclusions of the Committee on the Application of Standards (CAS) on the application of Conventions Nos 81 and 129 by Serbia, which called on the Government to: (i) amend sections 16, 17, 49 and 60 of the Law on Inspection Oversight without delay so as to ensure that labour inspectors are empowered to enter freely and without previous notice workplaces in order to guarantee adequate and effective supervision in conformity with Convention No. 81 and Convention No. 129; and (ii) undertake the legislative reforms in consultation with the social partners as well as to ensure effective collaboration between the labour inspectorate and the social partners. The Committee notes the observations of the IOE, the ITUC and the Trade Union Confederation "Nezavisnost" which recall these conclusions adopted by the CAS. The Committee also notes the SAE's indication in its observations that it is ready to review, with ILO technical assistance and through social dialogue, the Law on Inspection Oversight, in light of these conclusions. The Committee further notes the observations of CATUS, which state that section 17 of the Law on Inspection Oversight contradicts *Article 12(1)(a)* of Convention No. 81 and *Article 16(1)(a)* of Convention No. 129. According to CATUS, while ratified Conventions take precedence under the Constitution, inspections in practice are made with reference to national legislation and it is only in judicial proceedings that the court applies the Convention, in response to its reference by the workers' attorney. The Committee welcomes the Government's indication in its report that the Ministry of Labour, Employment, Veteran and Social Affairs held consultations with the Ministry of Public Administration and Local Self-Government, and that a tripartite workshop attended by all relevant stakeholders will take place with the technical assistance of the ILO in January 2020. The Committee also notes the information provided by the Government concerning the application in practice of *Article 12(1)(a)* of Convention No. 81 and *Article 16(1)(a)* of Convention No. 129, including its indication that, in 2018, 93 per cent of inspections took place without previous notification to the employer, and that all 939 inspections of unregistered entities were undertaken without previous notice. **Taking note of all these considerations, the Committee expects that the Government will continue to take the necessary and prompt measures to ensure the appropriate follow-up to the conclusions of the CAS, in consultation with the social partners. In this respect, it requests the Government to continue to provide information on the measures taken to ensure full compliance with Article 12 of Convention No. 81 and Article 16 of Convention No. 129, and to provide information on the outcome of the tripartite workshop.**

*Articles 3(1)(a) and (b), 7, 10 and 16 of Convention No. 81 and Articles 6(1)(a) and (b), 9, 14 and 21 of Convention No. 129. Adequate number of qualified labour inspectors and inspection visits to ensure the effective application of the legal provisions.* The Committee previously noted that, in 2016, the number of labour inspectors decreased from 324 to 242 following the implementation of administrative reforms. It noted the Government's indication that the labour inspectorate has managed to significantly increase the efficiency of its work with the existing resources, as a result of intensified inspections.

The Committee notes the observations of CATUS that the number of inspectors is insufficient and that they do not have appropriate conditions and means of work, all of which contribute to the large number of workers' rights violations; and notes the observations of the ITUC that the Government has taken measures to significantly decrease the number of labour inspectors, and that the ratio of inspectors to registered business entities does not enable an effective inspection service. The Committee also notes the indication of the Government, in response to the Committee's previous comments, that there are 240 labour inspectors and 416,815 registered business entities liable to inspection as at July 2019. The Committee also notes that the Government refers to a number of measures recommended by a 2019 analysis of inspection services, undertaken by the Balkan Centre for Regulatory Reform and the National Alliance for Local Economic Development, including the hiring of additional labour inspectors and support staff, the procurement of new IT equipment and new vehicles, and the amendment of an existing Rulebook to foresee the hiring and training of junior inspectors, in view of the aging demographic of the existing workforce of labour inspectors. In this respect, the Committee notes the Government's indication that it is in the process of adopting conclusions for a three-year action plan to hire civil servants carrying out inspections. **The Committee requests the Government to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate. In this respect, it requests the Government to indicate the measures taken to implement the recommendations to improve the labour inspectorate, including the implementation of the three-year action plan on the hiring of additional inspectors.**

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 2020.]**

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

### Observation 2019

The Committee notes the observations, received on 26 September 2019, made by the Confederation of Autonomous Trade Unions of Serbia (CATUS), the Serbian Association of Employers (SAE), and the Trade Union Confederation "Nezavisnost" (TUC Nezavisnost), concerning matters addressed in the present comment. **The Committee requests the Government to provide its reply to the TUC Nezavisnost's allegations of violations of trade union rights in practice.**

The Committee takes due note of the Government's comments on the observations made by the International Trade Union Confederation (ITUC) and the CATUS in 2012, and by the TUC Nezavisnost in 2013.

*Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing without previous authorization.* The Committee recalls that, for a number of years, it has been commenting upon the need to amend section 216 of the Labour Law, which provides that employers' associations may be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit, in order to establish a reasonable minimum membership requirement. In its previous observations, the Committee had noted the Government's indication that the Committee's comments on section 216 would be taken into consideration in the course of the amendment of the Labour

Law. The Committee had also observed that, in its conclusions, the 2011 Conference Committee considered that the Government should accelerate the long-awaited amendment of section 216 of the Labour Law and expressed concern at the lack of full participation of the social partners in the legislative review. The Committee notes the Government's indication that: (i) the adoption of a new Labour Law by the Ministry of Labour, Employment, Veteran and Social Affairs is foreseen for 2020; (ii) apart from harmonizing the existing Law with the relevant EU Directives and other "acquis", the new Law will specify more closely the provisions which have proved objectionable or insufficiently clear in practice; and (iii) the Ministry will take into consideration the Committees' comments related to the amendments of the Labour Law, and consider their adoption in cooperation with other stakeholders and social partners. **The Committee trusts that, in the process of revising the relevant legislation, which should be conducted in full consultation with the most representative workers' and employers' organizations, due account will be taken of the need to amend section 216 of the Labour Law so as to retain a reasonable minimum membership requirement that does not hinder the establishment of employers' organizations. The Committee requests the Government to provide a copy of the new Labour Law as soon as it is adopted.**

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

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

### Observation 2019

The Committee notes the Government's report, as well as the observations made by the Confederation of Autonomous Trade Unions of Serbia (CATUS) and the Labour Union Confederation "Nezavisnost", received on 7 November 2018. **The Committee requests the Government to provide its comments in this respect.**

*Articles 1 and 2 of the Convention. Active labour market measures.* The Government reports that the National Employment Strategy 2011–2020 sets out the main strategic objectives of its employment policy, which relate to the achievement of an efficient, stable and sustainable employment growth trend by 2020 and alignment of the national employment policy and labour market institutions with European Union requirements. It adds that the objectives to be attained include: promoting employment in less developed regions of the country and developing regional and local employment policies; improving the quality of the work force; developing the capacities of the relevant institutions, expanding active employment policy programmes and reducing duality in the labour market. In this context, the Government reports that the Active Employment Policy Measures (AEPs) taken under the National Employment Action Plan for 2018 (NEAP 2018) are based on the situation and trends in the labour market, the needs of employers and the results of impact evaluations carried out with respect to previous measures taken. The Government indicates that the national employment policy focuses on groups in vulnerable situations who experience difficulties in finding employment, and which have been identified as "hard-to-employ" persons. The CATUS observes that persons belonging to these groups make up 70 per cent of those registered with the National Employment Service (NES), indicating that this implies an issue with labour demand. The Committee also notes the adoption of the Economic Reform Programme 2018–2020, which aims, inter alia, to enhance the effectiveness of AEPs, focusing on young persons, redundant workers and the long-term unemployed. In addition, the Committee notes the information provided by the Government concerning the Employment and Social Reform Programme, which seeks to increase the employment rate and improve the status of young persons in the labour market. **The Committee requests the Government to continue to provide updated detailed information on the impact of the policies and measures implemented to promote full, productive and freely chosen employment. In particular, the Committee requests information on the nature and impact of the activities carried out under the 2018 National Employment Action Plan. It also requests the Government to provide information on the impact of the measures taken, including under the Economic Reform Programme 2018–2020, in tackling long-term and youth unemployment and promoting the employment of "hard-to-employ" persons.**

*Article 3. Consultations with the social partners.* Nezavisnost observes that, until 2017, constructive dialogue took place in the form of regular meetings of the Working Group for the development of the National Employment Action Plan. However, Nezavisnost indicates that, since that time, there has been a noticeable reduction in the quality and scope of tripartite dialogue, given that the social partners now participate in meetings only when they are requested to provide comments on documents that are already prepared. Moreover, Nezavisnost considers that the deadlines set for providing comments are insufficient to enable initiation of genuine dialogue. Nezavisnost reports that the last meeting of the Working Group for the development of the NEAP was held in October 2017, and that no meetings were held in 2018. In response to the Committee's previous request, the Government reports that the local employment councils play a key role in supporting employment in less developed areas and that the employment action plans constitute key instruments of local employment policy. The Committee notes that, in 2017, the Ministry of Labour, Employment, Veteran and Social Affairs (MOLEVSA) and the National Employment Service (NES) held four regional meetings on the "Role of local government units in accomplishing employment policy objectives". These meetings were attended by 166 representatives of 70 local government units, the NES and its branches, MOLEVSA, other institutions, the social partners, donors and experts. The meetings resulted in joint conclusions, in the form of guidelines for the development of employment policies on the basis of local trade market needs. The Government also reports that, in order to promote the AEPs to be implemented in 2018, four regional meetings were organized in cooperation with the Standing Conference of Cities and Municipalities, bringing together 134 representatives from NES branch offices and local government units. Nezavisnost observes that the local employment councils lack records concerning their membership, as well as of the level of participation of the social partners. **The Committee requests the Government to provide more detailed information on the manner in which the experience and views of the social partners have been taken into account in the formulation and implementation of employment policy measures, and the outcome of this process. The Committee also requests the Government to indicate the nature and scope of consultations held with representatives of the persons affected by the measures taken, such as women, young people, persons with disabilities, the Roma population and other concerned groups, in relation to the formulation and implementation of active employment policies and programmes, as required under Article 3 of the Convention.**

**C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*****Observation 2019***

*Articles 2 and 5 of the Convention. Effective tripartite consultations.* The Committee notes that, following the recommendations and the report of the Conference Committee at its 107th Session in June 2018, a tripartite workshop on the application of Convention No. 144, for which the ILO had provided technical assistance, was held on 25 January 2019. The workshop was attended by the representatives of trade unions and employers' associations and the Secretary of the Social and Economic Council of the Republic of Serbia (SEC). It was agreed that all issues concerning the preparation of the delegation of Serbia for its participation at the sessions of the ILO, except those dealt with in writing, will be dealt with through the consultative process of the SEC and are to be discussed a minimum of two times a year (before and after the Conference). In this context, the Government indicates that the composition of the delegation and the platform for its participation will be discussed verbatim as a separate item to be placed on the agenda of the SEC. It also indicates that the verbatim consultations held during the sessions of the SEC will be held in connection with all other matters of relevance to cooperation with the ILO, including: replies to questionnaires; recommendations submitted to the competent authorities with regard to the submission of ILO Conventions and Recommendations in compliance with article 19 of the ILO Constitution; re-examination and review at regular intervals of unratified Conventions and Recommendations not yet given effect to examine the measures to be taken, if any; issues that have arisen from the obligation of submission of national reports in compliance with article 22 of the ILO Constitution; and those concerning the proposed abrogation of ratified Conventions. The Government also reports that, on 25 September 2018, the SEC organized an Information Day at the National Assembly where, discussions focused on, inter alia, strengthening social dialogue and the capacities of the SEC and the social partners. ***The Committee requests the Government to continue its efforts to take effective and time-bound measures to ensure effective tripartite consultations in conformity with the provisions of the Convention, and to report on the nature, content and frequency of consultations in relation to the matters within the scope of Article 5(1)(a)–(e) of the Convention.***

**C100 - Equal Remuneration Convention, 1951 (No. 100)****Observation 2019**

*Articles 1 and 2 of the Convention. Legislation. Work of equal value.* For more than a decade, the Committee has been drawing the Government's attention to the fact that section 119a(2) of the Labour Code, as amended in 2007 by Act No. 348/2007 Coll., which defines "work of equal value" as being "work of the same or comparable complexity, responsibility and difficulty, carried out under the same or comparable working conditions and producing the same or comparable capacity and output for the same employer", is narrower than the principle of the Convention and limits the scope of comparison to jobs performed for the same employer. While it notes that the legislation refers to various objective factors in the evaluation of jobs, the Committee would like to highlight nonetheless that when examining two jobs, the value does not have to be the same or even comparable with respect to each of the factors considered. Determining whether two different jobs are of equal value consists of determining the overall value of the jobs when all the factors are taken into account. The principle of the Convention requires equal remuneration for work which is of an entirely different nature, including work with different levels of complexity, responsibility and difficulty, and which is carried out under entirely different conditions and produces different results, but which is nevertheless of equal value. In addition, the Committee wishes to underline that the application of the principle of the Convention should not be limited to comparisons between men and women in the same establishment, enterprise or sector but allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers or sectors. Where women are heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level may be insufficient (see 2012 General Survey on the fundamental Conventions, paragraphs 676–679 and 697–698). **Given the persistence of occupational gender segregation in the country, noted by the Committee in its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee asks the Government to take the necessary steps to amend the definition of "work of equal value" provided for in section 119a(2) of the Labour Code, in order to give full legislative expression to the principle of the Convention. In doing so, the Committee requests the Government to ensure that, when determining whether two jobs are of equal value, the overall value of the jobs is considered and that the definition allows for jobs of an entirely different nature to be compared free from gender bias and that the comparison goes beyond the same employer. It asks the Government to provide information on any progress made in that regard, as well as on the application in practice of section 119a(2) of the Labour Code, including by providing concrete examples on the manner in which the term "work of equal value" has been interpreted in administrative or judicial decisions.**

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

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)****Observation 2019**

*Articles 1 and 2 of the Convention. Discrimination on the basis of race or national extraction in education, vocational training, employment and occupation. Roma.* For more than 15 years, the Committee has been referring to the discrimination faced by the members of the Roma Community and their difficulties in integrating into the labour market. The Committee notes the Government's indication, in its report, that with a view to improving the situation of Roma pupils, several programmes have been adopted within the framework of the Strategy for the Integration of Roma, as updated to 2020, focusing more particularly on: (i) enhancing access to pre-school education for Roma children, including through the building of new education facilities, an increased number of education assistants and the introduction of a career coach to help them in their choice of secondary school; and (ii) reducing the number of Roma children placed in "special" schools, as a result of new legislation on the diagnosis of the mental capacity of children. In the context of addressing unemployment, other measures have also been adopted with a view to: (i) combating long-term unemployment, in the context of the new Action Plan for the Strengthening of Integration of the Long-term Unemployed, adopted in November 2016, which will also benefit members of the Roma community; and (ii) promoting social inclusion and the employment of Roma people, through community centres and field social work, as a result of two projects which started in March 2017. The Government states that information will be provided on the outcomes of these projects once available. The Committee notes that as a result of resolution No. 25/2019 of 17 January 2019, updated actions plans of the Strategy for the Integration of Roma were adopted for 2019–20, in particular in the areas of education and employment, with targeted actions on pre-school education and increased funding for education of Roma children in primary school. Concerning employment, the Committee notes that an action plan provides for: (i) awareness-raising activities on the situation of members of the Roma community in employment; (ii) improved enforceability of anti-discrimination legislation; and (iii) a survey planned for the second half of 2019 on existing barriers to Roma entry into the labour market. The Government also refers to the adoption of Act No. 336/2015 on Support to the Least Developed Districts of the Slovak Republic, which enables the Government to adopt action plans specifically tailored to the needs of the least developed regions and provide them with additional financial resources. Noting the Government's statement that it is not in a position to provide the statistical information requested by the Committee as such information is not available, the Committee notes that, as recently highlighted by the European Commission, the collection of data about Roma population has been planned under the project "Monitoring and Evaluation of Inclusive Policies and their Impact on Marginalized Roma Communities" for 2016–22, coordinated by the Ministry of Interior and funded by the European Social Fund (European Commission, Report on non-discrimination, 2018, page 53). It also notes that, in its 2018 concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern: (i) at the lack of comprehensive information provided by the Government on the socio-economic status of Roma, which limits the effective monitoring of the different programmes and strategies adopted by the Government; and (ii) about the insufficient resources allocated for the effective implementation of the National Strategy for Roma Inclusion which is also negatively affected by challenges in terms of coordination between national, regional and local authorities (CERD/C/SVK/CO/11-12, 12 January 2018, paragraphs 5 and 17). The Committee further notes with **concern**, the persistent, widespread and systemic discrimination and segregation affecting Roma children in the education system, as noted by several European and international bodies which recommended that all forms of discriminatory practices against Roma, in particular in access to education and employment, be brought to an end (E/C.12/SVK/CO/3, 18 October 2019, paragraph 50; A/HRC/41/13, 16 April 2019, paragraph 121; CERD/C/SVK/CO/11-12, paragraph 25; and European Commission, Country report on non-discrimination, 2018, page 145). **The Committee strongly urges the Government to bring an end to the segregation of Roma pupils in schools and asks the Government to provide information on the steps taken to this end and the results thereof. With regard to the discrimination and segregation faced by Roma pupils, the Committee asks in particular that the Government take the necessary steps to ensure that the results and impact of the actions and programmes implemented, including within the framework of the action plans to the Strategy for the Integration of Roma up to 2020, are assessed and asks the Government to communicate the results of this assessment. The Committee further asks the Government to continue to take proactive measures to ensure that acts of discrimination against Roma people in employment and occupation are effectively prevented and eliminated, including through active awareness-raising addressing stereotypes and prejudices, and to provide information on the results of the survey on existing barriers to Roma entry into the labour market. The Committee also asks the Government to provide information on any discrimination cases dealt with by the labour inspectorate, the Ombudsperson or the courts, or other competent authorities, as well as the penalties imposed and remedies granted. Finally, recalling that collecting and analysing appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination against Roma people and the setting of priorities and the designing of appropriate measures and to the monitoring and evaluation of the impact of such measures, the Committee hopes that the Government will soon be in a position to provide updated statistical information,**



***disaggregated by sex, on the labour market situation of Roma people.***

*General observation of 2018.* With regard to the above issues and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

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

## Observation 2019

*Articles 1 and 2 of the Convention. Protection of workers against discrimination. Legislation.* The Committee notes with **interest** the adoption of the Protection against Discrimination Act which came into force on 24 May 2016 and which replaced the Implementation of the Principle of Equal Treatment Act of 2004. It notes that the Act strengthens protection against direct and indirect discrimination and harassment and sexual harassment, irrespective of sex, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, sexual identity or sexual expression, social status, property status, education, or any other personal circumstance in various fields of social life including employment and occupation. The Committee notes that the Act does not explicitly refer to political opinion in the list of grounds covered. The Government reports that the Act's non-exclusive list of grounds which includes "any other personal circumstance", and the protection against employment discrimination provision on the ground of "belief" in the Employment Relationship Act of 2013, along with article 14 of the Constitution, which guarantees everyone equal human rights and fundamental freedoms irrespective of political or other conviction, among other grounds, provides protection against "inadmissible" unfavourable treatment on the basis of political conviction. The Committee further notes that the new Act established the new Advocate of the Principle of Equality as an independent body with enforcement powers. In the field of employment, the Committee notes that this Act overlaps and reinforces the existing non discrimination provisions in the Employment Relationship Act of 2013, as amended. **The Committee asks the Government to provide information on the measures adopted to promote and apply the Discrimination Act of 2016 as well as the non-discrimination provisions in the Employment Relationship Act of 2013, as amended, with respect to employment and occupation in the public and private sectors, including any steps taken to raise awareness among employers and workers. The Government is also asked to provide detailed information on the implementation of the protection against discrimination on the ground of political opinion. The Government is asked to provide information on the functioning of the office of the Advocate of the Principle of Equality and on any steps taken by the Advocate's Office to enforce the Discrimination Act in employment and occupation, including the number of cases dealt with and the ground of discrimination concerned, disaggregated by sex.**

*Article 1(1)(a). Discrimination on the ground of national extraction.* The Committee recalls its previous concerns regarding non-Slovenes from the former Socialist Federal Republic of Yugoslavia, namely "erased people" and the difficulties they face in terms of access to social and economic rights, including access to education and employment, because of the loss of their citizenship and by extension their right to remain in the country. The Committee recalls that, on 26 February 1992, 1 per cent of the population of Slovenia (25,671 people) was removed overnight from its registry of permanent residents, following the declaration of independence of Slovenia. "Erased people" are mostly of non-Slovene or mixed ethnicity, and they include a significant number of members of Roma communities. The Committee notes that the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia, 1999, as amended in 2010, expired on 24 July 2017. It notes from the report of the Government that, between 1999 and 31 December 2013, 12,373 permanent residence permits were issued under this Act; and from 1 January 2011 to 31 August 2017, 316 additional residence permits were issued. It further notes that, following the judgment of the European Court of Human Rights in *Kuric et al. v. Slovenia*, the Committee of Ministers decided in May 2016 that the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register, 2013, satisfied the judgment of the European Court of Human Rights and, thus, concluded the case. The Committee notes that this Act has begun to be implemented. However, it notes that the United Nations Special Rapporteur on minority issues, in its report following its visit to Slovenia (5-13 April 2018) highlighted that the situation of "erased people" (who for the most part are members of various ethnic, religious or linguistic communities of the former Socialist Federal Republic of Yugoslavia) – is still unsettled, as compensation is still being fought over – despite the judgements made by the European Court of Human Rights and a decision by the Constitutional Court in April 2018 ruling against the limitations for those who filed claims for damages in judicial processes on the amount of compensation awarded. The Committee notes also that the UN High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe, among others, have expressed their concern at this matter (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 52–55). **In light of the Constitutional Court ruling, the Committee urges the Government to take steps to provide a fair compensation scheme to "erased people" still awaiting to be compensated, to take into account losses such as property or employment and to continue to provide information on the steps taken and the results achieved.**

*Article 2. Equality of opportunity and treatment. Roma.* The Committee recalls that for a number of years it has highlighted that one of the main reasons for the high unemployment rate among Roma people is their education level. Hence, its previous request to the Government to pursue its efforts to promote equal access for Roma to education and training, and to provide information on: (i) the measures implemented to promote access to employment and to particular occupations of Roma men and women, including a description of the community work programmes, and their concrete results; (ii) the reasons for focusing primarily on community work in the context of employment programmes; and (iii) the measures taken to prevent and address discrimination, stereotypes and prejudice against the Roma community. The Committee recalls that, under *Article 1(3)* of the Convention, "employment and occupation" explicitly includes "access to vocational training". Moreover, in paragraph 750 of its General Survey of 2012 on the fundamental Conventions, the Committee highlights that access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market [as] it is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. The Committee adds that not only do apprenticeships and technical education need to be addressed, but also general education, "on the job training" and the actual process of training.

The Committee notes the very detailed information provided by the Government on the labour market situation of the Roma people and the range of measures adopted to improve their situation in education and employment. The Government states that it places great importance on measures (systemic, specific, and project-based) for the effective integration of Roma children in education. The Committee notes that from 2015 to 2017 there has been a slight decrease in unemployment and a slight increase in the employment of Roma men and women, with men having higher employment rates than women. It notes that Roma people continue to be a target group of the Active Employment Policy and that over 2,400 Roma participate, annually, in programmes including formal and informal education, training, career counselling, job-seeking assistance and public works projects. The Committee further notes the adoption of the National Programme of Measures for the Roma for the 2017–21 period, which includes raising educational levels, reducing unemployment, elimination of prejudice, stereotypes and discrimination, preserving Roma culture, language and identity, among its objectives. The Committee notes that the Commissioner for Human Rights of the Council of Europe, in its 2017 report, recognized that Slovenia has a solid legislative and policy framework for promoting Roma rights and welcomed the recent adoption of a revised National Programme of Measures for Roma 2017–21, which includes a plan for strengthening the pre-school education of Roma children; the tutoring system for Roma pupils; Slovenian language learning; the inclusion of Roma in the apprenticeship system; and the training of education professionals who work with Roma children. The Commissioner however observed that, if official segregation (schooling in separate classes) is no longer present, *de facto* the situation is still not satisfactory, for example: (i) Roma children continue to be underrepresented in pre-schools and overrepresented in special needs schools, with about 12.2 per cent of Roma children being directed to such schools in the school year 2017–18 in comparison with 6.18 per cent of other children; (ii) in kindergartens they can be placed together with other children in mixed kindergarten classes or in "special classes" (which is possible only in the regions with large Roma populations); (iii) there is still a high level of absenteeism from school and drop-out rates in some regions; and (iv) a very low number of Roma children who reach secondary and tertiary education in the country (over 60 per cent of Roma have not completed elementary school). The Commissioner noted that teachers, Roma children and parents generally acknowledge that many of the difficulties Roma children encounter in primary schools are due to language barriers as many Roma children have no or limited command of the language spoken by the majority population. He also identified the following additional reasons for this as: insufficient value placed on education by families; poor housing conditions that do not

allow families to make school a priority; early marriages and pregnancies; and criminality among teenage boys. The Committee notes further that, in its 2019 Country Report on Non-Discrimination in Slovenia, the Network of legal experts in gender equality and non-discrimination of the European Commission, observed that "In Slovenia, there are specific trends and patterns (whether legal or societal) in education regarding Roma pupils, such as segregation." In addition, the Committee notes that, the United Nations Special Rapporteur on Minority issues commended Slovenia for the considerable efforts it has made in recent years to improve the situation of Roma and the protection of their human rights, including in key areas such as education and employment. The Special Rapporteur noted that Slovenia does not officially collect disaggregated data on ethnicity, language or religion, and for this reason, no one has a clear idea of the actual size of the country's most vulnerable and marginalized minorities; and that no disaggregated population data have been collected since 2002. The Special Rapporteur however observed that the Roma (and the Sinti) continue to be the most marginalized and vulnerable minorities and recommended inter alia temporary affirmative action programmes in employment and increased awareness-raising campaigns to provide a more rounded view of members of the Roma community (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 20, 29, 33, 62). While welcoming the various initiatives taken by the Government to promote non-discrimination, education and employment of Roma, women and men, the Committee wishes to stress that the unemployment rate for Roma people continues to be high and that improving access to education is key to combat marginalisation and poverty experienced by the Roma people. **The Committee asks the Government to pursue its efforts to promote equal access for Roma people to education (in particular through a better access to pre-school education and the employment of suitably trained Roma teaching assistants), training and employment programmes. At the same time, the Committee asks the Government to increase its efforts to address discrimination and prejudice against the Roma community and to take steps to encourage Roma women and men to participate in programmes which will lead to their employment. Observing that there remains a fundamental gap between adopted policies and programmes on the one hand and reality as experienced by members of the Roma minority on the other hand, the Committee asks the Government to continue to provide detailed information on the results of the various initiatives taken to promote non-discrimination in education and employment of Roma women and men. Finally, recalling that appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments, the Committee asks the Government to take steps to collect and analyse relevant data, including comparable statistics to enable an accurate assessment of changes over time while being sensitive to and respecting privacy.**

*General observation of 2018.* With regard to the above issues and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. **The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.**

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

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

### Observation 2019

*Articles 3 and 4 of the Convention. National policy, non-discrimination, leaves and benefits. Legislative developments.* The Committee notes with **interest** the substantial amendments to the Parental Protection and Family Benefits Act in 2014, 2015, 2017 and 2018, which have the objective of transposing European legislation, including Council Directive 2010/18/EU, and of facilitating a more equal distribution of parental protection and childcare responsibilities between both parents. The Committee welcomes the various entitlements provided under the Act, including longer paternity leave, paternity leave benefit, parental leave for both parents, parental leave benefits, the possibility of reduction from full-time to part-time work, and other family and child support allowances and assistance. The Committee also notes the adoption of the Protection against Discrimination Act 2016 which prohibits discrimination on the basis of a number of specified grounds and on the basis of "any other personal circumstance", and which covers all areas of social life, including employment. It further notes that explanatory information about the 2016 Act on the official website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, indicates that an example of "any other personal circumstance" could be "parental or other family status". The Committee notes the adoption on 20 June 2019 of EU Directive 2019/1158 on work-life balance for parents and carers, repealing Council Directive 2010/18/EU on parental leave. **Noting the recent adoption of EU Directive 2019/1158 on work-life balance, the Committee asks the Government to provide information on: (i) the steps taken to transpose it into its national legislation; (ii) the manner in which the Parental Protection and Family Benefits Act of 2014, as amended, has been implemented in practice by both men and women taking up the various entitlements provided under the Act; (iii) the impact of this Act on any increase in the use of these measures by men; and (iv) the manner in which the Protection against Discrimination Act 2016 has been implemented to promote application of the Convention with respect to non-discrimination in employment of persons with family responsibilities, including any action taken under the office of the Advocate of the Principle of Equality.**

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

**C113 - Medical Examination (Fishermen) Convention, 1959 (No. 113)****C114 - Fishermen's Articles of Agreement Convention, 1959 (No. 114)****C126 - Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)***Observation 2019*

The Committee notes the Government's reports on the application of Conventions Nos 113, 114 and 126 relating to the fishing sector. The Committee also notes the observations of the General Union of Workers (UGT) and of the Trade Union Confederation of Workers' Commissions (CCOO), received on 22 and 31 August 2016, respectively, as well as the Government's reply to those observations. In order to provide an overview of matters arising in relation to the application of the Conventions on the fishing sector, the Committee considers it appropriate to examine them in a single comment, as follows.

The Committee notes with **interest** the measures that the Government plans to take in order to transpose Council Directive (EU) 2017/159, of 19 December 2016, implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche). **The Committee requests the Government to provide information on any measures or legal provisions adopted within this framework that have an impact on the application of the ILO Conventions on the fishing sector.**

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

*Article 2 of the Convention. Medical certificate for fishers.* The Committee notes that the CCOO refers to the need for medical staff to have access to job evaluation reports in relation to medical examinations so that they are fully aware of the occupational health risks workers face and have more precise information at their disposal when conducting such examinations. In this regard, the Committee notes the Government's indication that the concerns raised by CCOO will be taken into account during the development of the regulations of Act No. 47/2015 on social protection for workers in the maritime fishing sector.

**The Committee requests the Government to provide information on any developments in this area to ensure that doctors who grant medical certificates have all the necessary information at their disposal to discharge fully the functions entrusted to them by the Convention.**

*Article 5 of the Convention. Independent examinations by a medical referee.* The Committee notes the UGT's indication that, in accordance with section 10 of Royal Decree No. 1696/2007, regulating pre-embarkation maritime medical examinations, persons denied a certificate only have one administrative recourse, which is determined by the Director-General of the Social Marine Institute, only taking into consideration reports by the doctor who refused to grant the certificate. The Committee notes the Government's indication that, in the context of the regulations that are being drafted under Act No. 47/2015, a draft text is being prepared which includes the possibility for anyone who disagrees with the result of a medical examination to request another assessment by a different maritime health practitioner. **The Committee requests the Government to provide information on the developments of the draft text or any other measure taken to ensure that anyone denied a medical certificate is able to request another examination by one or more medical referees.**

**Fishermen's Articles of Agreement Convention, 1959 (No. 114)**

*Articles 3 to 11 of the Convention. Fishers' articles of agreement.* In its previous comments, the Committee requested the Government to take the necessary measures, without delay, to ensure the application of the provisions of the Convention relating to the obligation to conclude fishers' articles of agreement in writing (*Article 3*), the particulars that must be contained in the agreements (*Article 6*), the possibility for the fisher to obtain information on board about the conditions of employment (*Article 8*) and the need for national legislation, collective or individual agreements to determine the circumstances in which the fisher may demand his immediate discharge (*Article 11*). The Committee notes with **interest** the draft bill of February 2019, seeking to revise the amended text of the Workers' Charter, approved by Royal Legislative Decree No. 2/2015 of 23 October 2015, on work in fishing. Prepared within the framework of the transposition of the European Union Directive, the draft bill seeks to amend section 8(2) of the amended text of the Workers' Charter in order to require, in all cases, employment contracts for fishers in writing. The Committee also notes with **interest** the draft Royal Decree establishing working conditions in fishing, of September 2019, also prepared within the framework of the transposition of the Directive. This draft bill regulates, in a detailed manner, the content of fishers' articles of agreement. **The Committee requests the Government to provide information on the progress made on the draft bill and draft Royal Decree.**

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

*Article 3 of the Convention. Applicable legislation.* In its previous comments, the Committee requested the Government to provide information on any new legislation adopted in order to give effect to *Article 3* which establishes the obligation for each Member to maintain in force legislation that ensures the application of the provisions of Parts II (Planning and control of crew accommodation) III (Crew accommodation requirements) and IV (Application to existing ships) of the Convention. The Committee notes that the draft Royal Decree of September 2019 establishing working conditions in fishing regulates certain aspects of accommodation on board fishing vessels and establishes minimum safety and health requirements applicable to the accommodation. **The Committee requests the Government to provide information on the progress made on the draft Royal Decree of September 2019.**

Finally, the Committee notes that the CCOO in its observations welcomes the so-called SEGUMAR campaigns for the prevention of occupational hazards in fishing conducted by the Ministry of Development, the Ministry of Labour and Immigration and the Ministry of Environment and Rural and Marine Affairs, as well as detailed information provided by the Government on those campaigns.



## C117 - Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

*Observation 2019*

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 2 and 7 August 2018, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), attached to the Government's report. The Committee notes the Government's replies to these observations.

*Parts I and II of the Convention. Improvement of standards of living.* The Committee notes the detailed information provided by the Government on the steps taken to improve the employment levels of the entire population, especially those groups who have more difficulty integrating into the labour market, and thus improve standards of living. However, the Committee notes that most of this information refers to measures to promote employment and vocational training, which will be examined in its comments on the application of the Employment Policy Convention, 1964 (No. 122), and the Human Resources Development Convention, 1975 (No. 142). The Committee notes that, in its concluding observations of 25 April 2018, the United Nations Committee on Economic, Social and Cultural Rights (CESCR), noted with concern that, "for a country with the State party's level of development, the percentage of the population at risk of poverty and social exclusion is high, particularly among certain groups, such as young people, women, the least educated and migrants." (see E/C.12/ESP/CO/6, paragraph 33). The CESCR also expressed concern at the fact that this percentage is higher in certain autonomous communities and that children are most at risk of falling into poverty. In this context, the Committee notes that, in the framework of the "Europe 2020 Strategy", Spain made a commitment to reduce by between 1,400,000 and 1,500,000 (from 2009 to 2019) the number of persons at risk of poverty and social exclusion and the proportional rate of child poverty, according to the AROPE indicator, which measures the number of persons at risk of poverty and/or social exclusion. The Committee notes that, according to a report published by the European Anti-Poverty and Social Exclusion Network in 2019 entitled "Follow-up on the poverty and social exclusion indicator in Spain 2008–2018", the above mentioned objective is still far from being reached. This report indicates, on the basis of data from the National Institute of Statistics' (INE) Survey of Living Conditions, that, in 2018, some 26.1 per cent of the Spanish population (12,188,288 persons) was at risk of poverty and social exclusion. The report also indicates that the AROPE rate varies considerably depending on various factors, such as age and sex. The Committee also notes that, according to the report, in 2018, one in three persons with disabilities was at risk of poverty or social exclusion. With regard to the child poverty rate, the report indicates that, in 2018, some 26.8 per cent were at risk of poverty and 7.7 per cent were living in extreme poverty. The report also indicates large disparities between regions, with the regions to the north of Madrid maintaining the lowest rates of poverty and/or social exclusion, while the southern regions have much higher rates (between four and 18 percentage points above the national average). Lastly, the Committee notes the UGT's indication that the social partners do not participate in the formulation and implementation of the measures adopted by the Government with a view to improving the living standards of certain population groups. **The Committee requests the Government to send detailed information on any measures adopted or envisaged to improve the standards of living of the Spanish population (Article 2), especially for vulnerable groups such as children, women, young persons, migrant workers, persons with disabilities, the poorly educated and older adults. In this regard, the Committee requests the Government to take the necessary steps to ensure that these measures take account of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education (Article 5(2)). The Committee also requests the Government to provide detailed and updated information (disaggregated by sex, age and autonomous community) on the outcomes of these measures. Furthermore, the Committee encourages the Government to conduct a study into the living conditions of independent workers and wage earners, in coordination with the representative organizations of employers and workers (Article 5(1)).**

*Public Indicator of Multiple Purpose Income (IPREM).* In its observations, the CCOO refers to the minimum amount of unemployment benefit, which is set at 80 per cent of the Public Indicator of Multiple Purpose Income (IPREM), established each year in the General Budget Act. In this respect, the CCOO reports that the IPREM has been repeatedly frozen in recent years, to the extent that it does not guarantee the maintenance of minimum standards of living. Specifically, the CCOO indicates that, from 2010 to 2018, the IPREM appreciated at a rate 6.3 percentage points lower than average inflation in Spain. The CCOO also indicates that, in 2018, the IPREM was €430 per month (€5,160 per year), which is below the threshold to be at risk of relative poverty (which was €8,522 per year in 2017). The CCOO reports that one of the reasons for the decrease in the value of the minimum unemployment benefit is the absence of a legal formula to calculate the IPREM that ensures the maintenance of purchasing power. In this respect, the Government indicates that, under section 2(2) of Royal Decree-Law

No. 3/2004 of 25 June, the social partners are consulted regarding the amount of the IPREM before its approval. **Observing that, since its approval in 2004, the amount of the Public Indicator of Multiple Purpose Income (IPREM) has remained stable despite the economic improvement in the country in recent years, the Committee encourages the Government to formulate a study, in collaboration with the social partners, regarding the amount of the IPREM, which must be set with a view to ensuring the maintenance of minimum standards of living for the beneficiaries of unemployment benefits (Article 5(1)). The Committee also requests the Government to provide a copy of the study once it is completed.**

*Part-time and fixed-term contract workers.* The Committee notes that the CCOO reports serious shortcomings in the legal system in relation to minimum income guarantees for part-time workers. The CCOO indicates that, according to data published by the INE, the use of part-time contracts for men increased from 4.9 per cent in 2009 to 7.3 per cent in 2017, while for women it increased from 22.4 per cent to 24.2 per cent. The CCOO also indicates that, in 2017, the proportion of men working part-time involuntarily was 75.7 per cent and of women was 57.7 per cent, while the European Union average was 47.0 per cent for men and 24.1 per cent for women. The CCOO reports that most part-time workers have short-term contracts with significantly reduced working hours, which do not guarantee sufficient income and have serious consequences for the social security coverage of these workers, in violation of the provisions of *Article 5* of the Convention. The CCOO alleges that, as a result, the percentage of the “working poor” in Spain is higher than the European average. Specifically, the CCOO indicates that the employed population at risk of relative poverty in Spain amounted to 12.3 per cent for women and 13.7 per cent for men, while in the European Union these figures were 9.1 per cent and 10.1 per cent, respectively. The Committee also notes the CCOO’s allegations of the misuse of part-time contracts insofar as, in some cases, they are used with the principal objective of reducing business costs, mainly by reducing the wages received by workers and the social security costs associated with those wages. Furthermore, the CCOO indicates that, in 2015, the social security contribution rates for part-time fixed-term employment contracts were reduced, which helped to encourage their use, as it removed the burden borne by these contracts under the earlier legislation in comparison with other more stable forms of recruitment. In this context, the CCOO indicates that, between 2015 and 2016, the labour inspectorate conducted 20,039 labour inspections related to the misuse of part-time employment contracts, during which 3,025 violations were detected and 10,520 illegal part-time employment contracts were identified. In this respect, the CCOO indicates that, given the high numbers of part-time contracts, this action is not sufficient and points out the absence of an effective plan of action to repress the fraudulent use of part-time contracts. In its reply, the Government refers to several provisions of the legal system that aim to ensure that part-time workers have the same rights as full-time workers (such as section 12(4)(d) of the Workers’ Statute) and full-time contracts are converted to part-time contracts only with the consent of the worker (section 12(4)(e) of the Workers’ Statute). The Government reports the approval of the “Master Plan for Decent Work 2018–2020”, which includes a plan to combat fraud in short-term employment and a plan to combat the misuse of part-time employment. Lastly, the CCOO indicates that, before 2012, all workers without distinction had access to an unemployment benefit with a minimum value of 80 per cent of the IPREM. However, the CCOO alleges that, from 2012, the guaranteed minimum amount of these benefits for part-time workers was reduced in proportion to their hours worked, further reducing the income of these workers. **Noting the large numbers of short-term and part-time workers, as well as their high poverty rates, the Committee requests the Government to adopt the necessary measures with a view to ensuring the maintenance of minimum standards of living for these workers. The Committee also requests the Government to send detailed and updated information on the impact of the measures adopted or envisaged to end the misuse of short-term and/or part-time contracts, including those implemented by the labour inspectorate as part of the plans to combat fraud in short-term employment and the misuse of part-time employment.**

*Migrant workers.* In its observations, the UGT reports that the living standards of foreign nationals were not included in the standards, plans and measures adopted by the Government between 2013 and 2018. The UGT refers to, inter alia, the failure to include this group in the measures implemented as part of the Spanish Employment Activation Strategy (EEAE) and the various annual employment policy plans (PAPE) adopted during the above mentioned period. In this regard, the UGT indicates that, according to the INE Survey of Living Conditions, in 2017, the at-risk-of-poverty rate was 18 per cent among nationals, 39.2 per cent among foreign nationals from European Union member countries and 52.1 per cent among foreign nationals from non-European Union countries. In this regard, the Government indicates in its reply that foreign national workers who are in a regular situation and have a work permit can access the same programmes and measures as national workers. The Government also refers to the labour inspections carried out in the context of the “campaign on the discriminatory working conditions of migrant workers”, with a view to identifying possible discrimination against foreign national workers in enterprises. Lastly, the Committee notes that the UGT reiterates its concern regarding the impact on the application of *Article 2* of the Convention of the measures adopted by the Government since March 2012 on healthcare for the foreign national population. In its concluding observations of 25 April 2018, the CESCR expressed its concern at the regressive effect on the right to health of Royal Decree-Law No. 16/2012 of 20 April 2012 on urgent measures to guarantee the sustainability of the national health system, which limits the access of irregular migrants to health-care services and has led to a decrease in the quality of such services and to an increase in the disparities between the autonomous communities. The CESCR also expressed concern at the fact that no comprehensive impact assessment has been carried out with regard to this law and that the law is not considered to be temporary (see E/C.12/ESP/CO/6, paragraph 41). **The Committee requests the Government to provide detailed and updated information on the measures adopted or envisaged with a view to improving migrant workers’ standards of living and their impact. In this respect, the Committee requests the Government to take the necessary steps to ensure that these measures take account of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education (Article 5(2)).**

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

### Observation 2019

The Committee notes the observations made by the Trade Union Confederation of Workers’ Commissions (CCOO) and the General Union of Workers (UGT), received on 2 and 7 August 2018, respectively. The Committee also notes the observations of the Spanish Confederation of Employers’ Organizations (CEOE), included in the Government’s report. It also notes the Government’s responses to these 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 approval on 15 December 2017 of the Spanish Strategy of Activation for Employment (EEAE) 2017–20, which sets out the activation policy of the National Employment System for the coming years and establishes a system of incentives under which the outcome of the evaluations of employment policies are related to the financing of Autonomous Communities. The EEAE 2017–20 provides that the services and programmes implemented by the public employment services shall be designed to achieve five strategic objectives: (i) promote activation and improve the employability of young people; (ii) strengthen the potential of employment as the principal instrument of social inclusion; (iii) promote a supply of training adapted to a changing labour market; (iv) improve the performance of public employment services through the modernization of the tools adopted by the National Employment System; and (v) adopt a holistic approach to activation policies by establishing areas for collaboration with employers, the social partners and other public and private agents. The EEAE is designed to be one of the three coordination tools of the National Employment System, together with the information system of public employment services and the Annual Employment Policy Plans (PAPE). In this regard, the Committee also notes the approval on 27 March 2018 of the Annual Employment Policy Plan for 2018, which specifies the objectives to be achieved during the course of the year and establishes forecasts for employment activation policy services and programmes proposed for implementation by public employment services, and the indicators to be used to assess the extent to which the objectives are achieved. The Plan forms part of a broader context of reforms introduced within the framework of the so-called “European Semester”, which include the National Reform Programme for 2018. The Committee also notes the information provided by the Government relating to the impact of the previous strategy (EEAE 2014–16). In particular, the Government

indicates that, as a result of the EEAE 2014–16 and the improvement in the Spanish economy, since its approval, the number of employed persons rose by 2,980,600 (of whom 388,500 are under 30 years of age), the number of unemployed fell by 2,201,600 and the unemployment rate fell by 9.55 points. It adds that the percentage of jobseekers registered with public employment services who found a job in relation to the total number of jobseekers rose from 38.4 per cent in 2013 to 48.2 per cent in 2016. With regard to labour market trends, the Committee notes that, according to the Survey of the Active Population of the National Institute of Statistics (INE), the employment rate rose from 49.27 per cent in the third quarter of 2017 to 50.18 per cent in the third quarter of 2018, while the activity rate fell from 58.92 per cent to 58.73 per cent. Moreover, the unemployment rate fell from 16.38 per cent to 14.55 per cent. Nevertheless, in its observations, the CCOO indicates that a significant proportion of the decrease in the number of the unemployed corresponds to the fall in the active population. It adds that most of the employment created is concentrated in very low productivity sectors and continues to be precarious and low quality. In this regard, the CCOO considers that the contracts that are being concluded continue in their majority to be temporary and indicates that in 2017 some 95 per cent of contracts were temporary or part-time. The CCOO alleges that the average duration of temporary contracts is continuing to fall and that the number of short- and very short-term temporary contracts is increasing, as is labour mobility. In its reply, the Government indicates that, although the majority of contracts concluded are temporary, in 2017, for the first time since the beginning of the recovery, net employment creation for employees with indefinite contracts (263,900) was higher than for those with temporary contracts (222,900). The Committee notes the emphasis placed by workers' organizations on the lack of sufficient resources for employment policies and their preparation without knowledge of the impact evaluation of previous labour market policies, which prevents possible shortcomings in their application from being identified. They also consider that the evaluation of the Annual Employment Policy Plan is undertaken through a system of indicators which only serve as a tool for the distribution of budgetary resources for active policies between Autonomous Communities on the basis of objectives. They add that this evaluation system does not permit an evaluation of the impact of employment policies and lacks a gender perspective. The CCOO, UGT and CEOE call for a systematic evaluation of the impact of employment policies so that resources are assigned for measures that have proved to be more effective in improving employability and vocational integration. **The Committee requests the Government to provide an evaluation, undertaken in consultation with the social partners, of the impact of the employment measures adopted to achieve the objectives of the Convention, and particularly on the manner in which they helped the beneficiaries to obtain full, productive and lasting employment. The Committee also requests the Government to continue providing updated statistical information on labour market trends, and particularly on the active population, employment and unemployment rates, disaggregated by sex and age.**

*Youth employment.* In its previous comments, the Committee requested the Government to provide an evaluation, undertaken 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, particularly for young people with low skills. However, the Government has not provided information on this subject. The Committee notes that, according to the Survey of the Active Population, the employment rate for young persons under 25 years of age rose from 25.64 per cent in the third quarter of 2017 to 26.27 per cent in the third quarter of 2018, and the unemployment rate fell from 35.97 per cent to 33 per cent. Over the same period, the activity rate of that age group fell from 40.04 per cent to 39.21 per cent. The Government indicates that the strategic objectives of the EEAE 2017–20 include improving the employability and integration of young people under 30 years of age who are neither studying nor working through the assistance provided by the system. In this regard, the Government refers to the continued implementation of the programme, which has the objective of ensuring that all young people under 30 years of age receive a job offer, further education or a period of practice within a maximum period of four months after completing formal education or becoming unemployed. The Government adds that the changes made to the National Youth Guarantee System have made it possible to increase the number of persons registered to 1,096,798 young people in March 2018, of whom 470,032 found employment, which represents an employability rate of 43 per cent. Nevertheless, the CCOO considers that, although the youth employment statistics have improved in recent years, this is largely due to the fall in the youth population actively seeking employment and its emigration, which tends to improve unemployment and activity indicators. The Government indicates that this fall is also due to the evolution of the demographic pyramid and adds that the number of demotivated unemployed persons under 30 years of age in the second quarter of 2018 was 46 per cent lower than in the second quarter of 2014. However, the CCOO observes that measures have not yet been adopted with a view to the joint determination with the social partners of the Spanish Youth Entrepreneurship Strategy 2017–20, or a training and knowledge transmission programme in employment through replacement contracts, the preparation of a charter of non-labour practices and the development of a comprehensive programme of employment policy measures for unskilled young people, including the improvement of guidance services. The UGT observes that young people tend to have access to their first job through a temporary contract (in 2017, there were 2,338,800 young employed persons under 30 years of age with temporary contracts, accounting for 57 per cent of the total of employed persons with temporary contracts) and under precarious conditions. The UGT considers that initiatives for the creation of youth employment, such as the Youth Guarantee, are based on more precarious working conditions for young people. In this respect, the Committee notes that, according to the 2018 report on Spain prepared by the European Commission in the framework of the European Semester (SWD (2018) 207 final), there continue to be difficulties in the application of the Youth Guarantee, among which it emphasizes the difficulty of reaching out to young people neither in employment, nor in education or training ("NEETs") and those who are most vulnerable, the limited capacity of public employment services to provide personalized action plans and high-quality job offers adapted to the profiles of young beneficiaries. Finally, the workers' organizations indicate that the Delegated Commission of the Youth Guarantee System provided information to the social partners on the outreach of the programme, but that, although there has been progress, the information provided was not adequate. In this regard, the CEOE considers that it is necessary to be provided with fuller information on the specific activities undertaken with the beneficiaries of the programme and their impact in terms of integration and increased employability as a means of evaluating the impact of such measures. **The Committee therefore repeats its request to the Government to provide an evaluation, carried out in consultation with the social partners, of the employment measures to ascertain the specific results achieved through the measures adopted to promote youth employment, particularly for low-skilled young people, including those who are neither in employment, nor in education or training ("NEETs").**

*Long-term unemployed.* In reply to the Committee's previous comments, the Government indicates that, according to the data of the Survey of the Active Population, 52.5 per cent of the unemployed in 2017 were long-term unemployed, of whom 73 per cent had been seeking work for over two years. The long-term unemployment rate increases for persons over 55 years of age, whose situation is frequently aggravated by their low skill levels. The Government reports on the implementation of the joint action programme for the long-term unemployed, adopted in 2016, which provides for the development of personalized integration plans adapted to the occupational profiles of the long-term unemployed with a view to accelerating their return to work. Moreover, the Activation for Employment Programme has been renovated and the unemployment rate required for the Vocational Reskilling Programme (PREPARA) to be automatically extended has been reduced from 20 to 18 per cent. Both programmes are intended for the long-term unemployed who are in receipt of a cash benefit conditional on their participation in active employment policies. The Committee also notes, based on the 2018 report on Spain prepared by the European Commission, that the effectiveness of activation policies for this category of persons largely depends on the capacity of the public employment services in the Autonomous Communities and their coordination with employers and social services, which are improving only slowly. According to the report, although the rate of the long-term unemployed escaping from their situation of unemployment increased from 8.6 per cent in 2013 to 10.7 per cent in 2015, only 8.7 per cent of all the long-term unemployed who were registered had concluded a labour integration agreement in 2016 (compared with an average of 56.2 per cent in the European Union). The CCOO considers that, according to the data of the public employment services, some 1.66 million unemployed persons are excluded from the unemployment protection system, and only 58 per cent of the registered unemployed (52 per cent of whom are women and 62 per cent men) have protection of any kind. It adds that poverty levels therefore continue to be very high and indicates that in the first quarter of 2018 there were 1,241,800 households in which all the active members were unemployed and that in 2017, there were 1,103,000 persons without income (wages, pensions or benefits). The UGT indicates that the

employment policy measures are not adequate to address structural unemployment. In this regard, the UGT emphasizes the need to take action to attract inactive unemployed persons to the public employment services, develop guidance services with personalized plans and establish an integration agreement bringing together the rights and duties of both the unemployed and service providers. **The Committee once again requests the Government, with the participation of the social partners, to provide an impact assessment of the measures adopted to facilitate the labour market return of the long-term and very long-term unemployed.**

*Education and vocational training programmes and policies.* In reply to the Committee's previous comments, the Government refers once again to Act No. 30/2015, of 9 September, regulating the in-work vocational training system for employment, which includes the objectives of guaranteeing the exercise of the right to training for workers, employees and the unemployed, and particularly those who are vulnerable. The Government reports the adoption of Royal Decree No. 694/2017, of 3 July, implementing the Act. The Committee notes the information contained in the Government's report on the various types of training that are provided, including programmed training by enterprises, and the provision of training courses for employed workers and the unemployed. With regard to the training programmes for the unemployed, the Government indicates that it is intended to programme, with a compulsory and non-binding report by the most representative employers' and workers' organizations, the provision of training for the unemployed adapted to the individual training needs of each worker and the requirements of the production system, with a view to them acquiring the skills required by the labour market and improving their employability. In addition to their participation in these programmes, unemployed workers will also be able to participate in the training available for employed workers. The Committee also notes, based on the information contained in the report of the European Commission, that people with higher qualifications encounter difficulties in finding appropriate jobs, and that both over-qualification and under-qualification are common in Spain. The proportion of people with higher qualifications in jobs which do not require higher education was 39.7 per cent in 2016 (the European Union average is 23.5 per cent). Finally, the Committee notes the observations of the social partners concerning vocational education and training programmes, which are examined in the context of the application of the Human Resources Development Convention, 1975 (No. 142). **The Committee requests the Government to continue providing detailed information on the measures that are adopted or envisaged, in collaboration with the social partners, to improve skills levels and coordinate education and training policies with potential employment opportunities, particularly for disadvantaged or vulnerable groups.**

*Article 3. Consultation with the social partners.* In reply to the Committee's previous comments, the Government indicates that the EEAE 2017–20 is the product of dialogue and consensus with the social partners and the Autonomous Communities, within the framework of the various bodies on which they are represented, including sectoral conferences and the Dialogue Round Table of the Shock Employment Plan. Nevertheless, the CCOO denounces the failure to comply with the right to be informed and consulted through participatory and consultative bodies on which the social partners are represented. The CCOO indicates that the General Council of the National Employment System has not been convened. The UGT considers that there is a continued failure to give effect to this Article of the Convention, as there is no real participation in the design, evaluation and implementation of policies. Finally, the CEOE emphasizes once again that the social partners are not able to make observations prior to the preparation of the National Reform Programme and calls for more active participation in its preparation, application and evaluation. **The Committee requests the Government to continue providing detailed information on the manner in which it is ensured that the social partners can participate actively in the design, implementation and evaluation of employment policies.**



## C172 - Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)

*Observation 2019*

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), received on 2 and 7 August 2018, respectively. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), included in the Government's report. The Committee also notes the Government's replies to these observations.

*Article 8 of the Convention. Application of the Convention.* The Committee notes the detailed information provided by the Government in relation to changes in the regulation of working conditions in the tourism and hospitality sector. The Government refers, among other things, to the adoption of Royal Legislative Decree No. 2/2015 of 23 October, adopting the revised text of the Workers' Charter, sections 34 to 38 of which regulate working time. In particular, the Committee notes that section 34(2) of the Workers' Charter provides that "by collective agreement or, in the absence of such an agreement, by agreement between the enterprise and the workers' representatives, the uneven distribution of working time may be established throughout the year. In the absence of an agreement, the enterprise may distribute 10 per cent of working time unevenly throughout the year." In this regard, the CCOO maintains that accorded to the enterprise, under the Workers' Charter to distribute such a high percentage of working hours unilaterally effectively reduces its incentive to conclude an agreement or accord. The Committee also notes the adoption of the Royal Legislative Decree No. 16/2013 of 20 December, which establishes measures to promote stable employment and improve the employability of workers. The Decree introduces amendments to the regulations governing the working conditions of part-time workers, such as the obligation to record their working hours, the prohibition on working additional hours when their contracts are for less than ten hours per week (calculated on an annual basis) and the prohibition on working overtime (except in specific cases covered in section 35(3) of the Workers' Charter). The CCOO, for its part, points out that while overtime is prohibited, the new legislation provides for the possibility of working voluntary additional hours. The CCOO condemns the reduction of the notice period for additional hours from seven to three days and potentially even less, if agreed by collective agreement, including by agreement with the enterprise. It also points out that the Royal Decree removes the legal obligation to include the distribution of working hours agreed in the contract. The Committee notes, on the other hand, that the CCOO and the UGT refer once again to section 41(1) of the Workers' Charter, which grants employers unilateral power to modify working conditions substantially for economic, technical, organizational or production-related reasons. They allege that the section in question allows employers to modify unilaterally important aspects of working conditions, such as working time, the remuneration system and wage rates.

With regard to the collective agreements concluded in the sector, the Government announces the signature of the National Agreement for the hotel sector (ALEH V) on 25 March 2015 by the representative employers' and workers' organizations in the sector. The Government indicates that ALEH V envisages, inter alia, the conclusion of appropriate subsectoral state agreements linked to it, and the creation of a professional card to promote employability and professionalism in the sector. The Committee also notes the information in the Government's report relating to the various collective agreements concluded in the hotel and tourism sector at the regional and provincial levels between 2011 and 2017. However, the CCOO regrets the decline in the number of sectoral collective agreements in the hotel and catering sector, since in August 2018 only 69 per cent of workers in the sector were covered by a valid sectoral collective agreement. Among the reasons for this decline, the CCOO and the UGT refer once again to section 84(2) of the Workers' Charter, which provides that the application of enterprise agreements shall have priority with respect to sectoral collective agreements, especially in relation to wage rates, hours of work and paid annual holiday. The CCOO and the UGT claim that, consequently, working conditions in the sector have deteriorated. They further claim that the outsourcing of activities in the sector through multiservice enterprises, which apply enterprise agreements in order to cut costs, affecting women in particular (mainly hotel housekeepers), has increased. In this regard, the CCOO indicates that since 2015, the courts have rescinded a large number of such agreements in whole or in part as unlawful. In its reply, the Government refers to the "Master Plan for Decent Work 2018–2020", which includes the implementation of various measures to monitor compliance with the law in areas such as overtime, wages and part-time contracts, and strengthens monitoring of the legality of the agreements concluded in the sector. Lastly, the Committee notes the statistical information provided by the Government on violations observed with regard to hours of work and rest and to wages during the labour inspections carried out between 2013 and 2017 by the Labour and Social Security Inspectorate. In this respect, the CEOE contends that the assistance provided by the labour inspection services on knowledge of standards and its proper application should be strengthened, and the involvement of the social partners in the planning of inspection activity should be promoted, in order to ensure its effectiveness. ***The Committee requests the Government to continue to provide detailed and updated information on the application of the Convention in practice, including sectoral and enterprise collective agreements, extracts from inspection reports, court decisions and data on the number of workers covered by the measures that give effect to the Convention, disaggregated by sex and age, as well as the number and nature of violations reported. The Committee also requests the Government to send detailed and updated information on the manner in which workers employed in hotels and restaurants are affected by the most recent amendments to the Workers' Charter, including the number and terms of agreements negotiated as well as provide their copies.***

*Hotel housekeepers.* The Committee notes that the Government indicates that hotel housekeepers are one of the groups most affected by new, decentralized forms of work which often lead to significant wage reductions. In this context, the Committee notes the meeting convened by the Employment and Social Security Committee on 19 April 2018 to explain the employment situation of hotel housekeepers in Spain. Representatives of various workers' organizations in the sector appeared before the Senate to provide information on and present proposals for the improvement of their working conditions. The Committee notes that, according to the report of the aforementioned Senate session, hotel housekeepers (also called hotel cleaners or "Kellys") are workers, mostly women immigrants, who clean hotel rooms and common areas of hotels. During the session, it was emphasized that these workers have seen their working conditions deteriorate, due to the growth of outsourcing in the sector through multiservice companies, and the increase in temporary recruitment by temporary employment agencies. During the meeting, the difficulty of hotel housekeepers in organizing themselves in trade unions, losses of more than 40 per cent of wages, losses of established social benefits and sectoral agreements and increased workloads over shorter shifts were highlighted. The Committee also notes that on 30 August 2018, the round table on quality employment in the hotel sector, in which the social partners participated, approved the recognition of occupational diseases related to the work performed by hotel housekeepers. Lastly, the Committee notes that the UGT reports cases of the sale and purchase of employment by purported training companies that offer access to employment as hotel housekeepers in exchange for a fee. ***The Committee requests the Government to provide detailed and updated information on the application in practice of the Convention relating to hotel housekeepers. It also requests the Government to provide information in reply to the allegations regarding cases of the sale and purchase of employment as hotel housekeepers (Article 7).***

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

*Observation 2019*

The Committee notes the observations of the General Union of Workers (UGT) in the Government's report and also the Government's reply. The Committee also notes the observations of the Spanish Confederation of Employers' Organizations (CEOE), received on 6 September 2019, and the Government's reply to these observations.

*Article 7(2) of the Convention. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such labour and ensuring their rehabilitation and social integration. Trafficking for sexual and labour exploitation.* The Committee previously encouraged the Government to pursue its efforts to protect young persons under 18 years of age, particularly girls and migrant children, against trafficking for sexual exploitation. It also asked the Government to supply information on the number of migrant children registered in the context of the "Protocol on unaccompanied foreign minors".

The Committee notes the observations of the UGT indicating that the "Comprehensive plan to combat the trafficking of women and girls for sexual exploitation" does not take account of the situation of male victims or of other forms of exploitation, such as labour exploitation. The UGT emphasizes that the immediate consequences are insufficient protection of boys who are victims of trafficking for sexual exploitation, and inadequate protection for women and girls who are victims of other forms of human trafficking. In this regard, the Committee notes the Government's indication that the appendix to the "Framework Protocol for the protection of human trafficking victims" concerning action to detect and provide care for child victims of trafficking applies to both girls and boys.

The Committee notes the Government's indication that the information on unaccompanied foreign minors (MENA) and the information on child victims of trafficking and sexual exploitation originate from two different registers. Accordingly, the information from the MENA register covers all unaccompanied migrant children identified in Spain. In April 2019, a total of 12,303 migrant children (11,367 boys and 936 girls) were registered. The data concerning trafficking victims originate from the Ministry of the Interior. In 2016, the 148 registered victims included six children; in 2017, nine children were recorded among 155 victims; in 2018, the 128 trafficking victims included six children. As regards sexual exploitation, in 2016 three children were registered among 433 cases; in 2017, six children in 422 cases; and in 2018, two children were recorded among 391 cases.

The Committee also notes the statistics provided by the Government relating to working children who are victims of trafficking for labour exploitation, for begging and for criminal activities. In 2016, no cases of trafficking of children for labour exploitation were recorded. In 2017 and 2018, four cases each of trafficking of children for labour exploitation were recorded. Between 2016 and 2018, the Government recorded ten cases of children involved in criminal activities and four cases of children used for begging.

The Committee duly notes the inclusion of specific provisions for persons working with minors – in order to check that there is no previous history of sexual offences against children or trafficking offences for sexual exploitation – in the draft Act for the comprehensive protection of children and young persons from violence. This draft legislation is being drawn up by the Ministry of Health, Consumer Affairs and Social Welfare, the Ministry of Justice and the Ministry of the Interior. The Committee notes that the CEOE emphasizes in its observations that the participation of trade unions and occupational associations in this process is important to ensure progress and substantive changes to the draft legislation, in view of their knowledge of the social and economic realities in Spain.

Furthermore, the Committee notes the amendments to sections 177bis(6) and 192(3) of the Penal Code, which impedes any person guilty of sexual offences against children or trafficking of persons for sexual exploitation from exercising an occupation or conducting a business, whether remunerated or not, which involves regular, direct contact with children and young persons.

The Committee also notes that the appendix to the "Framework Protocol for the protection of human trafficking victims" concerning action for detecting and providing care for child victims of trafficking has been in force since December 2017. The Committee notes the CEOE's indication that the network of Spanish enterprises is mainly composed of small and medium-sized enterprises (SMEs) and micro SMEs and that it is asking the Government to take the social partners into consideration in the context of the training initiatives of this Framework Protocol. The Committee notes the Government's indication that, in the context of the labour inspectorate's plans of action, the participation of occupational associations and trade unions has been ensured through a general council, in accordance with section 11 of the regulations governing the work of the National Labour and Social Security Inspectorate (Royal Decree No. 192/2018). **The Committee requests the Government to continue its efforts to protect children under 18 years of age against the trafficking of persons, while involving the social partners in the measures and action taken. The Committee also requests the Government to provide detailed information on the procedure followed and the results achieved in the context of the "Protocol on unaccompanied foreign minors" and of the appendix to the "Framework Protocol for the protection of human trafficking victims".**

*Clause (d). Children at special risk. Migrant children and unaccompanied minors.* The Committee previously reminded the Government that migrant children are particularly exposed to the worst forms of child labour and requested the Government to intensify its efforts to protect these children from the worst forms of child labour, particularly by ensuring their integration into the education system. It also requested the Government to provide information on the measures taken and the results achieved in this respect.

The Committee notes the UGT's indications that the Council of Ministers has established a working group on migrant children in conjunction with the Public Prosecutor's Office, the autonomous communities and NGOs in order to analyse proposals concerning the template for the care of unaccompanied foreign minors. However, the UGT highlights the fact that the most representative trade unions of the country have not been invited to join this working group, even though they represent people working at the young person reception centres. The UGT also expresses concern at the care template, which involves public contracts or subsidies in which the economic criteria takes precedence over quality of service. The Committee notes the Government's indications in this regard that an Inter-territorial Coordination Council has been set up to deal with the situation of unaccompanied foreign minors by facilitating the interaction and coordination of all institutions and administrations connected with providing care for them. The first meeting took place in September 2018.

The Committee also notes the information on the "Programme of guidance and reinforcement for progress and support in education". The total amount of credits allocated to this programme in 2018 was over 81 million euros, divided among the autonomous communities. The goal of the programme is to establish support mechanisms to ensure high-quality education through equitable education policies aimed at reducing the drop-out rates from school and vocational training. Guidance and psycho-pedagogical teams located in the region or the school district have information on the socio-economic and family profiles of at-risk groups of pupils. Support is given by these teams in schools with the involvement of the families. **The Committee requests the Government to continue its efforts to protect migrant children and unaccompanied foreign minors from the worst forms of child labour, ensuring their integration into the school system. The Committee also requests the Government to provide information on the results achieved in the context of the "Programme of guidance and reinforcement for progress and support in education" and on the measures taken within the Inter-territorial Coordination Council to facilitate the provision of care for unaccompanied foreign minors.**

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

**C081 - Labour Inspection Convention, 1947 (No. 81)****Observation 2019**

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

*Articles 3, 4, 5(b), 6, 8, 10, 11, 13, 17 and 18 of the Convention. Operation of the labour inspection system under the supervision and control of a central authority and duality of inspection functions assumed by state and trade union labour inspectors in this system.* The Committee previously noted that responsibility for labour inspection falls within the State Inspection Service for Labour, Migration and Employment (SILME) of the Ministry of Labour, Migration and Employment, and the inspectorate established by the Federation of Independent Trade Unions (in view of the small number of the staff working at the SILME). The Committee notes the Government's indication, in response to its request, that at the end of 2016, there were 58 public labour inspectors and 36 trade union inspectors. In this respect, the Committee also notes from section 353 of the Labour Code that employers provide funds for the work of the trade union labour inspectorate. **The Committee once again requests the Government to provide information on whether the SILME maintains supervision and control over the labour inspection system in its entirety (including supervision of the activities of trade union inspectors), or whether the SILME and the inspectorate run by the Federation of Independent Trade Unions act independently from each other, except for the conduct of joint inspections. Noting that the Government has not provided information in this regard, the Committee also once again requests it to specify the status and conditions of service of labour inspectors serving in the SILME, in relation to the conditions applicable to similar categories of public servants and trade union inspectors (including concerning stability of employment, wages and allowances). Finally, the Committee requests the Government to indicate whether the trade union inspectorate of the Federation of Independent Trade Unions operates entirely on the budget from contributions of employers, and if not, to indicate the other sources of funding of its operation and their proportionate amounts.**

*Articles 12 and 16. Powers of labour inspectors.* The Committee notes that sections 357 and 358 of the Labour Code provide for certain powers of trade union and public labour inspectors, for instance the power to undertake labour inspections and request information on compliance with the legal provisions. It further notes that sections 19 and 348 of the Labour Code require employers to ensure free access of public labour inspectors to workplaces. The Committee notes, however, with **deep concern** that pursuant to Law No. 1505 of 21 February 2018 providing for a moratorium on inspections in industrial workplaces, the provisions in the Code regarding labour inspections are suspended during the period of application of Law No. 1505, which according to information on the website of the President of the country will be effective for a two-year period, following the issuing of a Governmental Decree. The Committee also notes with **concern** that the Law on Inspections of Economic Entities, adopted by Government Decision No. 518 of 2007, which applies to the labour inspectorate (among other inspection bodies) and to all sectors (not only industry), provides for a number of limitations on inspections. The Committee further notes with **concern** that the Law includes restrictions with regard to the frequency and duration of labour inspections (for example, section 10 of the Law provides that an inspection body may not inspect an economic entity more than once every two years, or exceptionally for a high risk entity, not more than once every six months, and that new entities cannot be inspected until the end of their third year of registration), the need to give prior notice (for example, sections 11 and 13 of the Law provide that economic entities shall be notified three days before the initiation of inspections, except in emergency situations or aggravated sanitary situations (section 15)), and the limitations of the scope of inspections, particularly in terms of the issues to be inspected (section 13). **The Committee emphasizes that any moratorium placed on labour inspection is a serious violation of the Convention, and urges the Government to ensure that the necessary legislative measures are taken with a view to ending the moratorium on labour inspections in the industrial sector. The Committee urges the Government to take the necessary measures to ensure that labour inspectors are empowered to make visits without previous notice, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in conformity with Articles 12 and 16 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.**

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)****Observation 2019**

The Committee notes the observations of the International Trade Union Confederation (ITUC), which were received on 11 September 2019.

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

*Article 2 of the Convention. Equality of opportunity and treatment between men and women.* The Committee notes the discussion in the Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (i) report on the concrete measures taken to ensure that direct and indirect discrimination on all grounds is prohibited in law and in practice; and (ii) provide without delay information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005 (Law on State Guarantees of 2005).

The Committee welcomes the detailed information provided by the Government in its report regarding the legislative framework and the policies and programmes developed and implemented with respect to equality of opportunity and treatment between men and women. The Committee notes, in particular, that the Government acknowledges that gender equality cannot be achieved if laws and policies are not implemented in practice and indirect discrimination persists. The Government adds that in order to detect indirect discrimination the country's legislation in this area needs to be improved and the first priority is to amend the national legislation. It also indicates that to improve policy to ensure de facto gender equality, the National Development Strategy for 2030 provides for the following measures: (i) improving legislation in order to realize the State guarantees of creating equal opportunities for women and men; (ii) developing institutional mechanisms to introduce national and international obligations to ensure gender equality and expand women's opportunities in sectoral policies; (iii) activating mechanisms for the literacy and social inclusion of women, including rural women; (iv) boosting the gender capacity and gender sensitivity of staff members at agencies in all branches of government; and (v) introducing gender budgeting setting in the budget process. The Committee welcomes the Government's indication that, with a view to achieving de facto gender equality, a working group on the improvement of laws and regulations to eradicate gender stereotypes, protect women's rights and prevent domestic violence has made proposals on introducing the concepts of direct and indirect discrimination, temporary measures, and compulsory gender analysis of laws. As regards the Law on State Guarantees of 2005, the Committee notes that in 2018, the Committee for Women's and Family Affairs (CWFA) monitored its implementation, by collecting and analysing data from central ministries and agencies, and selected local executive authorities. The Government further states that a report, which includes an analysis of the implementation of the law's articles, and conclusions and recommendations to improve its monitoring and implementation, was prepared in this regard.

The Committee notes from ITUC's observations that it regrets the lack of concrete information provided by the Government to the supervisory bodies, which would enable a more comprehensive assessment of the situation in the country. It further notes that ITUC emphasizes the need not only to draft laws but also to implement specific policies to eliminate all forms of discrimination and take proactive measures to identify and address the underlying causes of discrimination and gender inequalities deeply entrenched in traditional and societal values. The Committee notes ITUC's statement that the very name of the body responsible



for the implementation of the national policy to protect and ensure the rights and interests of women and their families, the "Committee for Women's and Family Affairs (CWFA)", raises an issue because it appears to enshrine the idea that women are the only ones who have to assume responsibilities in relation to their families. In this regard, the Committee notes the Government's indication that, with the aim of eradicating stereotypes about the roles and duties of women and men in the family and society, and to boost awareness of and ensure equal rights and opportunities for men and women, a range of measures were implemented for different sections of society and the possibilities of the mass media are widely used. More than 200 programmes on understanding the importance of ensuring equal rights and opportunities for men and women were prepared and broadcasted by the members of the CWFA.

The Committee notes the Government's statement that expanding economic opportunities for women and their competitiveness on the labour market, and the development of their entrepreneurial activities play a key role in ensuring gender equality. In this regard, it notes the detailed information regarding measures adopted to support the development of women entrepreneurship, through the allocation of grants, access to microcredit and an inter-agency working group to support women's entrepreneurship operating under the State Committee for State Property Investment and Management. The Government also indicates that further to the adoption of concluding observations in 2018 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW/C/TJK/CO/6, 14 November 2018), it has formulated, through broad discussions with the civil society, and adopted in May 2019, a National Plan of Action to Implement the Recommendations of the CEDAW 2019–22. In this regard, the Committee notes that the CEDAW, while welcoming the measures taken to support women entrepreneurs and to regulate domestic work and work from home, expressed concern *inter alia* about the following: (i) the concentration of women in the informal sector and in low-paying jobs in the healthcare, education and agriculture sectors; (ii) the low level of participation of women in the labour market (32.6 per cent) and the low employment rate among women (40.5 per cent), compared with men (59.5 per cent); (iii) the absence of social security coverage, the shortage of preschool facilities and conflicting family responsibilities, which make women particularly prone to unemployment; (iv) the adoption of the list of occupations for which the employment of women is prohibited, in 2017; and (v) the lack of access to employment for women with a reduced capacity for competitiveness, such as women with disabilities, mothers with several children, women heads of single-parent families, pregnant women and women who have been left behind by male migrants (CEDAW/C/TJK/CO/6, paragraph 37).

With respect to the employment of women in the civil service, the Committee welcomes the various steps taken by the Government. It notes the Government's indication that as at 1 July 2019, there were 18,835 active civil servants in total (19,119 as at 1 January 2019), including 4,432 women, which represented 23.5 per cent of civil servants (4,441 or 23.2 per cent as at 1 January 2019). In leadership positions, there were 5,676 persons representing 30.1 per cent of all civil servants and 1,044 of them were women (18.4 per cent in such positions). With a view to promoting gender equality in the civil service, the Government adds that the Civil Service Agency (CSA) together with all State bodies is taking appropriate steps to recruit women to the civil service at all levels of government. The Committee notes the Government's indication that, in the first half of 2019, the CSA together with the Institute for State Administration held 24 professional training courses for civil servants, including four retraining and 20 professional development courses, which were attended by 977 persons, 236, or 24.1 per cent, of whom were women. In line with the requirements of State statistical report form No. 1-GS, "Report on the quantitative and qualitative composition of civil servants", the CSA also conducts quarterly monitoring and draws up statistical reports on the number of civil servants, including women, the results of which are transmitted to the appropriate State bodies and discussed at board meetings for the necessary steps to be taken. The Government also mentions positive measures adopted to promote the employment of women in the civil service, through the implementation, since 2017, of the State Programme on the Development, Selection and Placement of Gifted Women and Girls as Leading Cadres of Tajikistan 2017–2022; the establishment of incentives and quotas for women; and, on first appointment to the civil service, the granting of three additional steps on the grading scale, pursuant to Presidential Decree No. 869 adopted in 2017. According to the Government, as a result of implementing those measures, 36 women were recruited to various civil service positions in the first half of 2019.

***Welcoming the positive developments regarding the promotion of gender equality in employment and occupation both in the private and the public sectors, the Committee asks the Government to pursue its efforts to foster equality opportunity and treatment between men and women in employment and occupation and, in particular, to take appropriate steps, including through amending legislation, to address indirect discrimination and occupational gender segregation. The Committee asks the Government to provide information on the content, conclusions and recommendations in the report prepared to analyse the implementation of the Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights No. 89 of 1 March 2005, as well as on any follow-up measures taken in this regard. The Committee also asks the Government to continue to provide detailed information on the situation of men and women in employment and occupation, both in the private and public sector, as well as on the results of any positive measures taken to improve women's access to employment, and their results. Noting that the Government's report does not contain any information on any concrete measures taken, and their results, to address direct and indirect discrimination based on grounds other than sex, the Committee asks the Government to provide such information in its next report.***

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

### Observation 2019

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

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

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

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

The Committee notes the Government's information in its report that the State Supervisory Service for Labour, Migration and Employment under the Ministry of Labour supervises and monitors compliance with labour legislation. The activities of the State Supervisory Service include monitoring of child labour in the formal and informal economy as well as children working on a self-employed basis. However, no information has been provided on the number of inspections carried out and the number of violations related to child labour detected by the State Supervisory Services in the informal economy. In this regard, the



## Tajikistan

Committee notes from a report entitled *ILO–IPEC contributions to eliminate the worst forms of child labour in Tajikistan, 2005–15* (ILO–IPEC Report, 2015) that children in Tajikistan work in almost all sectors of industry, as well as in cotton, tobacco and rice plantations and in various services such as car washing, shoe cleaning and transportation of carriages in the markets. **The Committee therefore requests that the Government take the necessary measures to strengthen the capacity and expand the reach of the State Supervisory Services so as to ensure appropriate monitoring of child labour in the informal economy and to guarantee the protection afforded by the Convention to children under the age of 16 years who are working in the informal economy. It also requests that the Government provide information on the number of inspections conducted by the State Supervisory Service in the informal economy as well as the number of violations detected with regard to the employment of children in this sector.**

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

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

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

**The 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 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019 and examined by the Committee below. It further notes the observations of the Confederation of Public Employees Trade Unions (KESK) of the Turkish Confederation of Employers' Associations (TİSK) transmitted by the Government with its report. The Committee will examine the contents thereof once their translation becomes available. The Committee further notes the observations of the International Transport Workers' Federation (ITF), received on 4 September 2019 and referring to the information submitted by the ITUC. The Committee also notes the TİSK observations received on 2 September 2019.

The Committee recalls that it had previously requested the Government to reply to the 2018 observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ) alleging that workers employed temporarily via private employment agencies could not enjoy trade union rights, as well as to the allegations of pressure exercised on workers, particularly in the public sector, to join unions designated by the employer. The Committee notes the Government's indication that in a "triangular employment contract" arrangement (in which the worker is employed by a temporary employment agency and works for a different employer), workers have the right to organize in the branch of activity in which the employment agency operates. **The Committee requests the Government to provide further information in this regard, including concrete examples as to how the rights of workers in a triangular employment contract arrangement are exercised in practice.** With regard to the allegation of pressure exercised on workers in the public sector, the Government refers to the legislative provisions guaranteeing protection against anti-union discrimination and points out that unions and workers are entitled to administrative and judicial means to contest such actions. It refers, in particular, to the first paragraph of article 118 of the Penal Code, according to which, any person who uses force or threats with the aim of compelling a person to join a trade union or not to join, or to participate in union activities or not to participate, or to resign from a trade union office shall be punished by imprisonment for a term of six months to two years. In addition, according to the Government, in such cases, the legislation provides for compensation equivalent to at least the amount of one year's wage and, in the case of a dismissal, the possibility of reinstatement. Public sector employers have the responsibility to respect the law in discharging their duties and thus are further liable under the public law.

**Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)**

The Committee notes the discussion that took place in the Conference Committee in June 2019 concerning the application of the Convention. The Committee observes that the Conference Committee noted with concern the allegations of restrictions placed on workers' organizations to form, join and function and called on the Government to: (i) take all appropriate measures to guarantee that irrespective of trade union affiliation, the right to freedom of association can be exercised in normal conditions with respect for civil liberties and in a climate free of violence, pressure and threats; (ii) ensure that normal judicial procedure and due process are guaranteed to workers' and employers' organizations and their members; (iii) review Act No. 4688, in consultation with the most representative workers' and employers' organizations, in order to allow that all workers without any distinction, including public sector workers, have freedom of association in accordance with the Convention in law and practice; (iv) revise Presidential Decree No. 5 to exclude workers' and employers' organizations from the scope; and (v) ensure that the dissolution of trade unions follows a judicial decision and that the rights of defence in due process are fully guaranteed through an independent judiciary.

*Civil liberties.* The Committee recalls that for a number of years it has been commenting upon the situation of civil liberties in Turkey. Noting the Government's indication that domestic administrative or judicial remedies were available against all acts of the administration, the Committee had requested the Government to indicate whether such remedial channels had been invoked by those affected and with what results. The Committee had also requested the Government to provide information on the measures taken to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention.

The Committee notes the Government's reiteration that Turkey is a democratic country, upholding the rule of law and that no trade union had ever been closed or their officials suspended or dismissed on grounds of their legitimate activities. The Government indicates that: (i) with the enactment of the Act on Trade Unions and Collective Labour Agreement (Act No. 6356) and substantial amendments to Act No. 4688 on public employees unions in 2013, the rate of unionization has steadily increased, reaching 22 per cent in public and private sectors combined (66.79 per cent public sector; 13.76 per cent private sector). Currently, there are four trade union confederations in the private sector and ten confederations of public servants trade unions. Like all democratic countries, Turkey has a regulatory framework for organizing meetings and demonstrations. When trade union members transgress the law, destroy public and private property and seek to impose their own rules during the meetings and demonstrations, the security forces are obliged to intervene to preserve public order and safety. The Government indicates that marches and demonstrations can be organized with a prior notification, as illustrated by the May Day celebrations, held by all trade unions and confederations in a peaceful manner. The Government further reiterates that fundamental rights and freedoms are protected under the national Constitution. Apart from the right to seek judicial review against acts of the administration, every person may apply to the Constitutional Court against public authorities for violation of constitutional rights and freedoms. The Government further points out that the allegations mostly concern the period during the state of emergency between July 2016 and July 2018 in the aftermath of a coup attempt and that the problems occurred when the requirements of the state of emergency were ignored and disrespected persistently by some trade unions and their members. Although civil servants do not have the right to strike, strike actions were called for by some public servants' trade unions and their members; and open air meetings and demonstrations were conducted in violation of the provisions of Act on Meetings and Demonstrations No. 2911. Consequently, the disciplinary procedures may have been applied for civil servants involved in politics.

Regarding the alleged excessive use of force by the security forces, the Government points out that it has taken all the necessary measures to prevent the occurrence of such incidences. It explains that these incidences largely occurred for two reasons: (1) infiltration of illegal terrorist organizations into the marches and demonstrations organized by trade unions; and (2) the insistence of some trade unions to organize such meetings in areas not allocated for such purposes. The Government informs that the security forces intervened in 2 per cent of cases out of 40,016 actions and activities in 2016; in 0.8 per cent of cases out of 38,976 activities in 2017; and in 0.7 per cent of cases out of 36,925 activities in 2018. According to the Government, as of 7 May 2019, the interference by the security forces rate is 0.8 per cent and occurs only in cases of violence and attacks against the security forces and citizens and when the life of citizens is affected unbearably.

Finally, the Government indicates that a Judicial Reform Strategy was launched on 30 May 2019 by the President of the Republic. The main aims of this reform include strengthening of the rule of law, effective protection and promotion of rights and freedoms, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time. The Government indicates that a clear and measurable Action Plan will also be prepared and Ministry of Justice will issue annual monitoring reports.

While taking note of the above, the Committee notes with **concern** the observations of the ITUC alleging that since the attempted coup and the severe restrictions on civil liberties imposed by the Government, workers' freedoms and rights have been further restricted (the ITUC denounces, in particular, police crackdowns on protests and the systematic dismissal of workers attempting to organize). The Committee further notes with **concern** the allegation of the murder of a president of the rubber and chemical workers' union Lastik-İş on 13 November 2018 and the sentencing, on 2 November 2018, of 26 trade union members to a suspended five-month imprisonment for "disobeying the law on meetings and demonstrations" after taking part in a protest in March 2016 demanding the recognition of the right to organize at a private company (the ITUC alleges that the protest was violently dispersed by police). The Committee also notes with

**concern** the ITUC allegations of criminal prosecution of the following trade union leaders for their legitimate trade union activities: (1) the General Secretary of the teacher's union Eğitim Sen was arrested in May 2019 for attending a press meeting and was thus not allowed to attend the ILO Conference; (2) Kenan Ozturk, the President of the transport workers' union TÜMTİS, and four other union officials were arrested under Act No. 2911 for visiting, in 2017, the unfairly dismissed workers of a cargo company in the Province of Gaziantep and holding a press conference; while they await criminal trial, another TÜMTİS leader, Nurettin Kilicdogan is still in prison; (3) Arzu Çerkezoğlu, the President of the Confederation of Progressive Trade Unions of Turkey (DISK) is facing criminal trial for speaking at the public panel organized by Turkey's opposition party in June 2016; and (4) in May 2019, the prosecution began proceedings against Tarım Orman-ı, the President of the Civil Servants Union of Agriculture, Forestry, Husbandry and Environment for criticising the Government after he publicly defended workers' right to benefit from the public facilities.

The Committee notes that the ITUC expresses its concern at the seriousness and persistence of violations of freedom of association and the Government's authoritarian measures to interfere in trade union affairs and impose heavy restrictions on the right to organize. The ITUC alleges that it has become almost impossible for trade unions in Turkey to operate. It states, in this respect that from 2016, the Government has justified continued violations of civil liberties under the guise of the state of emergency through associated decrees. As a result, about 110,000 public servants and 5,600 academics have been dismissed; about 22,500 workers in private education institutions have had their work permits cancelled; 19 trade unions have been dissolved and about 24,000 workers are undergoing various forms of disciplinary action associated with workers' protests. More than 11,000 KESK representatives and members were suspended from their jobs or dismissed because of their trade union activities, under the pretext of national security and emergency powers. Furthermore, the ITUC states that the Government continues to uphold emergency state laws that allow for arbitrary dissolution of trade union organizations. Decree No. 667 adopted in 2016 provides that "trade unions, federations and confederations ... found to be in connection, communication or adherence to formations threatening national security or to terrorist organizations are banned upon the suggestion of the commission and approval of the minister concerned". The ITUC further alleges that the law makes no distinction between a trade union as an organization with an objective public purpose and individual actors and holds all trade union members guilty by association with a closing down of the union. Although the Government has set up an Inquiry Commission to review its actions, including cases of trade union dissolution, the process does not enjoy the trust of victims and trade unions due to the manner in which it was constituted and the results of the processes so far (the ITUC alleges that it is marred by a lack of institutional independence, long waiting periods, an absence of safeguards allowing individuals to rebut allegations and weak evidence cited in decisions to uphold dismissals). **While noting the Government's reply to some of these allegations, the Committee requests the Government to provide its detailed comments on the remaining lengthy and serious allegations of violations of civil liberties and trade union rights.**

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* In its previous comments, the Committee had noted that section 15 of Act No. 4688, as amended in 2012, excludes senior public employees, magistrates and prison guards from the right to organize. The Committee notes the Government's reiteration that the restrictions under section 15 of the Act are limited to those public services where the disruption of service cannot be compensated, such as security, justice and high level civil servants. **Recalling that all workers, without distinction whatsoever, shall have the right to establish and join trade unions of their own choosing and that the only possible exceptions from the application of the Convention in this regard pertain to the armed forces and the police, the Committee encourages the Government to take the necessary measures to review section 15 of Act No. 4688, as amended, with a view to ensuring to all public servants the right to form and join organizations of their own choosing. It requests the Government to provide information on all measures taken or envisaged in this respect.**

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes.* The Committee recalls that in its previous comments it had noted that section 63(1) of Act No. 6356 provides that a lawful strike or lockout that had been called or commenced may be suspended by the Council of Ministers for 60 days by a decree if it is prejudicial to public health or national security and that if an agreement is not reached during the suspension period, the dispute would be submitted to compulsory arbitration. For a number of years, the Committee had been requesting the Government to ensure that section 63 of Act No. 6356 was not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. While observing that in a decision dated 22 October 2014, the Constitutional Court ruled that the prohibition of strikes and lockouts in banking services and municipal transport services under section 62(1) was unconstitutional, the Committee noted that pursuant to a Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The Committee further noted with concern that in 2017, five strikes were suspended including in the glass sector on the grounds of threat to national security, while in 2015 the Turkish Constitutional Court had found a strike suspension in the same sector unconstitutional. The Committee recalled that the right to strike may be restricted or banned only with regard to public servants exercising authority in the name of the State, in essential services in the strict sense of the term, and in situations of acute national or local crisis, for a limited period of time and to the extent necessary to meet the requirements of the situation. Recalling the Constitutional Court ruling that strike suspensions in these sectors were unconstitutional, the Committee had requested the Government to take into consideration the above principles in the application of section 63 of Act No. 6356 and KHK No. 678. It further requested the Government to provide a copy of KHK No. 678. The Committee notes a copy of the Decree and will examine it once the translation thereof is available. The Committee further notes the Government's indication that the power to suspend a strike for 60 days rests with the President when a strike action is harmful to the general health and national security or to urban public transportation of metropolitan municipalities or to economic and financial stability in banking services. The Government indicates that where the strike has been suspended, the High Board of Arbitration makes maximum effort to bring the parties to an agreement. Judicial procedure is open for the stay of execution against the decision of the Board. The Government points out that pursuant to article 138 of the Constitution on "Independence of Courts," no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of their judicial power, send them circulars, or make recommendations or suggestions. The Committee notes that, according to the ITUC, while the legislation indicates that the measure of suspension should be limited to strikes that may be prejudicial to public health or national security, it has been interpreted in such a broad manner that strikes in non-essential services have also been effectively prohibited. It informs in this respect that in January 2019 a strike called by the ITF-affiliated railway union in Izmir has been postponed under these laws. **The Committee requests the Government to provide its comments thereon. Considering that strikes can be suspended only in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in an event of an acute national crisis, the Committee requests the Government to ensure that the above is taken into consideration in the application of section 63 of Act No. 6356 and KHK No. 678.**

The Committee recalls that the ITUC has previously alleged that Decree No. 5 adopted in July 2018 provided that an institution directly accountable to the Office of the President – the State Supervisory Council (DDK) – had been vested with the authority to investigate and audit trade unions, professional associations, foundations and associations at any given time. According to the ITUC, all documents and activities of trade unions may come under investigation without a court order and the DDK has discretion to remove or change the leadership of trade unions. Recalling that any law that gives the authorities extended powers of control of internal functioning of unions beyond the obligation to submit annual financial reports would be incompatible with the Convention, the Committee had requested the Government to transmit a copy of Decree No. 5 in order to make a thorough examination of its conformity with the Convention. It had also requested the Government to provide specific information on any investigations or audits undertaken pursuant to Decree No. 5 and their results, including any dismissal or suspension of trade union leaders. The Committee notes the Government's indication that there has never been an investigation or audit of a trade union organization or suspension of a trade union official by the State Supervisory Council pursuant to Decree No. 5. The Government explains that the Council's powers to investigate with the purpose of ensuring the lawfulness, regular and efficient functioning and improvement of the administration emanates from of article 108 of the Constitution. It further indicates that the Council has no authority to dismiss trade union officials and has never interfered and has no intention to interfere with the internal functioning of the unions. The measures of dismissal can be taken only by the courts within the framework of

existing legal arrangements. Furthermore, suspension is a measure applied to public officials in cases where the provision of public services so requires during an administrative investigation. When a suspension measure needs to be taken for elected officials such as trade union officials, the State Supervisory Council can only propose the application of this measure to the competent authorities which, in the case of trade unions, refers to the trade unions' own supervisory boards and the disciplinary committees. The Committee notes a copy of Decree No. 5 transmitted by the Government and will examine it once its translation is available. **The Committee requests that the Government continue to provide information on any investigations or audits undertaken by the Council, pursuant to Decree No. 5 or article 108 of the Constitution, and their results including any sanctions assessed.**

*Article 4. Dissolution of trade unions.* The Committee recalls that after the attempted coup of 15 July 2016, Turkey was in a state of acute national crisis, and that an Inquiry Commission was established to examine applications against the dissolution of trade unions by a decree during the state of emergency. The Committee firmly hoped that the Inquiry Commission would be accessible to all the organizations that desired its review and that the Commission, and the administrative courts that reviewed its decisions on appeal, would carefully examine the grounds for the dissolution of trade unions paying due consideration to the principles of freedom of association. It requested the Government to provide information on the number of applications submitted by the dissolved organizations and the outcome of their examination in the Commission. The Committee had further requested the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning dissolved trade unions. The Committee observes that the Government refers only to cases of Cihan-Sen and Aksiyon-İş Confederations. According to the Government, these organizations, together with their affiliated trade unions, were dissolved on the basis of their connection to the FETO terrorist organization that perpetrated the coup attempt to overthrow the democratically elected government. The Government indicates that the cases of the abovementioned organizations are still pending before the Inquiry Commission. **Recalling that the dissolution and suspension of trade unions constitute extreme forms of interference by the authorities in the activities of organizations, the Committee once again requests the Government to provide information on the number of applications submitted by the dissolved workers' organizations, and the outcome of their examination in the Commission. The Committee further requests the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning dissolved trade unions.**

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 2019

The Committee notes the observations of the Confederation of Public Employees Trade Unions (KESK) and of the Turkish Confederation of Employer Associations (TİSK) communicated with the Government's report. The Committee will examine their contents once translation thereof becomes available.

*Previous observations of the social partners.* The Committee had previously requested the Government to provide its comments on the observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ) alleging the partiality in the practice of the Supreme Arbitration Board and inadequate protection of union members against anti-union discrimination pending the authorization of an organization as collective bargaining agent. The Committee notes the information provided by the Government regarding the composition of the Board and the indication that TÜRK-İŞ, the organization which represents the majority of workers covered by the Act on Trade Unions and Collective Bargaining (Act No. 6356), is represented by two members. The Government informs that in its decision making, the Board takes into consideration the country's economic situation, subsistence indices, actual wages, wages paid in comparable workplaces, other working conditions and income components in accordance with the provisions of article 54 of the Constitution, relevant provisions of Act No. 6356 and of the relevant Regulations. The Government also states that the Board establishes balanced collective agreements taking into account the position of workers and employers, as well as its own precedents. As to the alleged inadequate protection of union members against anti-union discrimination, the Government refers to the legislation in force and in particular to sections 23–25 of Act No. 6356, establishing such protection, and sections 118 and 135 of the Penal Code, providing for penalties for obstructing trade union activities by using force, threats or other unlawful acts, and for recording personal data unlawfully, including information on trade union affiliation. The Committee notes the information on the legislative protection against acts of anti-union discrimination and refers to its comments below as concerns the effectiveness of this protection in practice.

*Scope of the Convention.* In its previous comment, the Committee had noted that while the prison staff, like all other public servants were covered by the collective agreements concluded in the public service, this category of workers did not enjoy the right to organize (section 15 of the Act on Public Servants' Trade Unions and Collective Agreement (Act No. 4688)). The Committee had requested the Government to take the necessary measures, including legislative review, with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them. The Committee notes the Government's indication that when adopting Act No. 4688, the Parliament did not consider it appropriate to grant the right to establish trade unions to those working in the penitentiaries so as to ensure that in the exercise of their duties such workers remain impartial and do not discriminate on the grounds of their philosophical belief, religion, language, race, group, party or trade union affiliation. The Government reiterates that the fact that a public servant does not have the right to form a trade union does not mean that he or she cannot benefit from a collective agreement and that all public servants in Turkey benefit from the provisions of the relevant collective agreement regardless of whether or not they are union members. **Recalling that all public servants not engaged in the administration of the State must enjoy the rights afforded by the Convention, the Committee once again requests the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that the 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 Committee on the Application of Standards of the International Labour Conference (hereafter, the Conference Committee), the Committee has been requesting the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors. Noting the Government's indication that preparations for the establishment of the data collecting system were underway within the framework of the "Improving Social Dialogue in Working Life" project, the Committee had requested the Government to provide information on the progress made in the establishment of such system. The Committee notes with **regret** the Government's indication that while a report entitled "Methods for Establishing Data Collection System on Trade Union Discrimination in Private and Public Sectors and a Model Proposal for Turkey" was prepared and a workshop was organized on 3 October 2018 at the ILO Ankara Office with the participation of the social partners and representatives of the institutions expected to contribute to this issue, no concrete model for collecting anti-union discrimination data was found. **The Committee is therefore bound to reiterate the June 2013 request of the Conference Committee and expects the Government to provide in its next report information on the measures taken or envisaged in this respect.**

*Articles 1, 2 and 3. Massive dismissals in the public sector under the state of emergency decrees.* In its previous comment, the Committee took note of the information on the high number of suspensions and dismissals of trade union members and officials under the state of emergency. It noted in this respect the allegation that the state of emergency was used by the political power to target and punish certain trade unions and to exert pressure on oppositional trade unions through dismissals of their members. Firmly hoping that the Inquiry Commission (established to review such dismissals) has the necessary means to examine the relevant facts, the Committee had requested the Government to provide information on the functioning of the Commission and to indicate the number of applications received from trade union members and officials, and the outcome of their examination. The Committee had also requested the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials. The Committee notes the Government's indication that as of 29 August 2019, there were 126,200 applications submitted to the Inquiry



Commission. Since 22 December 2017, the Commission delivered its decisions in respect of 84,300 applications, out of which, 6,700 were accepted and 77,600 were rejected; 41,900 applications are still pending. The Government indicates that the Commission delivers individualized and reasoned decisions following a speedy and extensive examination. The Government further indicates that although KESK alleged that it was targeted or discriminated against, out of the 125,678 dismissals, KESK itself claims around 4,000 dismissals of its members, and out of 588 decisions of the Inquiry Commission regarding KESK members, 199 applications were accepted for reinstatement. The Government points out that the rate of positive decisions in relation to KESK members is one in three, which is above the average rate. 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 that according to the International Trade Union Confederation, more than 11,000 KESK representatives and members were suspended from their jobs or dismissed because of their trade union activities. **The Committee requests the Government to provide its comments thereon.**

While noting the general statistics provided by the Government, the Committee **regrets** the absence of specific information, with the exception regarding KESK members, on the number of trade union members and officials involved. Regarding KESK, the Committee expresses its **concern** that according to the Government, only about 15 per cent of cases involving its members have been examined and observes that among those only one third were accepted for reinstatement. It recalls from the previous examination that in case of a negative decision, the applicants can have recourse to the competent administrative courts in Ankara. The Committee **regrets** the absence of information regarding the number and outcome of appeals against the negative decisions of the Inquiry Commission concerning trade union members and officials. **The Committee reiterates its firm hope that the Inquiry Commission and the administrative courts that review its decisions will carefully examine the grounds for the dismissal of trade union members and officials in the public sector and order reinstatement of the trade unionists dismissed for anti-union grounds. The Committee once again requests the Government to provide specific information on the number of applications received from trade union members and officials, the outcome of their examination by the Inquiry Commission and on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials.**

*Article 1. Anti-union discrimination in the course of employment.* The Committee recalls the observations of KESK and the Education and Science Workers Union of Turkey (EĞİTİM SEN), alleging that hundreds of their members and affiliates, mostly in the education sector, were transferred against their will from their workplaces in 2016 (at least 122 transfers, mainly for participation in trade union activities and events) and in 2017 (1,267 transfers, 1,190 of whom from the education sector). It further recalls the observations of KESK alleging that the so-called social equilibrium compensation agreements concluded pursuant to section 32 of Act No. 4688 contain provisions that discriminate against members of minority unions as they impose higher fees on them and make the distribution of benefits dependent on the clear disciplinary record of the employee. KESK referred in this regard to agreements concluded in Gaziantep and Kocaeli, where Bem-Bir-Sen, an affiliate organization of the allegedly pro-government MEMUR SEN confederation represented the majority, and TİM BEL SEN, a KESK affiliate, was the minority union. KESK indicated that a number of affected employees had challenged the discriminatory provisions in court. The Committee had requested the Government to take the necessary measures to prevent the occurrence of anti-union transfers and demotions in the future, and to ensure that if any anti-union discriminatory measures remained in force, they were revoked immediately. It had also requested the Government to reply to the KESK allegation with regard to the inclusion of discriminatory clauses in certain social equilibrium compensation agreements. The Committee notes the Government's indication that as a result of court rulings on the issue, social equilibrium membership contributions are now collected equally from all employees without any regard to their trade union affiliation and social equilibrium compensation payments are made equally in the same manner. Furthermore, the employees with a disciplinary record in the above-mentioned municipalities benefit equally from the social equilibrium compensation payments. With regard to the alleged anti-union discrimination, the Government emphasises that section 18 of Act No. 4688 provides for sufficient protection and guarantees for public servants who are trade union executives or members. Pursuant to this section, public employers cannot take discriminatory measures against public servants on the grounds of their trade union membership. Public servants cannot be dismissed or treated differently due to their participation in the legitimate activities of trade unions or confederations. Moreover, public employers cannot change the workplace of trade union executives (i.e., shop stewards, union's workplace representatives, union's provincial and district representatives, officials of unions and their branches) without providing clear and precise reasons therefor. **While taking note of the information provided on the legislative protection against anti-union acts, the Committee once again requests the Government to take the necessary measures to prevent measures of transfer or demotions of a discriminatory nature and on anti-union grounds and to ensure that measures of this nature that are still in force are immediately repealed.**

*Article 4. Promotion of collective bargaining. Cross-sector bargaining.* In its previous comments, the Committee had noted that while cross-sector bargaining resulting in "public collective labour agreement framework protocols" was possible in the public sector, this was not the case in the private sector. It noted in this respect that pursuant to section 34 of Act No. 6356, collective work agreement may cover one or more than one workplace in the same branch of activity, thereby making cross-sector bargaining in the private sector impossible. The Committee had requested the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 in a manner so as to ensure that it does not restrict the possibility of the parties in the private sector to engage in cross-sector regional or national agreements should they so desire. The Committee notes the Government's indication that: Act No. 6356 entered into force in 2012 following negotiations with the social partners; section 34 of the Act was drafted taking into account their views; there have been no problems regarding its implementation; and no request for its amendment have been submitted by the social partners. **Recalling that in accordance with Article 4 of the Convention, collective bargaining must be promoted at all levels, the Committee once again requests the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 so as to ensure that the parties in the private sector wishing to engage in cross sector regional or national agreements can do so without impairment. It requests the Government to provide information on the steps taken in this regard.**

*Requirements for becoming a bargaining agent.* The Committee recalls that in its previous comments, it had noted 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 (progressively, 3 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. It further recalls that the 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additionally, 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 3 per cent branch threshold was reduced to 1 per cent with regard to all trade unions. Furthermore, the Committee recalls that until 6 September 2018, legal exemptions from the branch threshold requirement were granted to three categories of previously authorized trade unions, so as to prevent the loss of their authorization for collective bargaining purposes. 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 was provisional, the Committee had requested the Government to indicate whether the exemption had been extended beyond 6 September 2018, and the impact of the decision made in this regard on the capacity of previously authorized organizations to bargain collectively. It had further requested the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining 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 had a negative impact on the coverage of the national collective bargaining machinery, revise the law with a view to its removal.

The Committee recalls that the Committee on Freedom of Association has referred to it the legislative aspects of Case No. 3021 (see 391st Report, October–November 2019, paragraph 70) concerning the impact of application of Act No. 6356 on the trade union movement and the national collective

bargaining machinery as a whole. The Committee notes the Government's indication that the exemption granted to trade unions under second paragraph of the provisional section 6 of Act No. 6356 ended on 6 September 2018. Pursuant to the requirement of Act No. 6356, the trade unions whose exemption is ended shall receive a certificate of authorization to conclude collective labour agreement if the number of their members exceeds 1 per cent of the total number of workers employed in the branch of activity to which the workplace or the enterprise belongs and represents more than 50 per cent of the employees in the workplace or more than 40 per cent of the employees in the enterprise. The Government points out that Act No. 6356 was drafted in consultation with the social partners and taking into consideration the universal principles regarding trade union rights and freedoms. Following the entry into force of the arrangements outlined in the Act, the Government proceeded to obtain the views and evaluations of the social partners. While some of the social partners asked for the continuation of the branch level threshold, others were of the view that it needs to be reduced or abolished. Currently, there is no agreement on this issue. The Government indicates, however, that should a consensus be achieved on this matter, steps will be taken to make the necessary arrangements. **Noting that that the provisional exemption has not been extended beyond September 2018, the Committee requests the Government to provide information on the impact of the non-extension on the capacity of previously authorized organizations to bargain collectively and to indicate the status of the collective agreements concluded by them. It also requests the Government to continue monitoring the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners and to provide information in this regard.**

With regard to the workplace and enterprise representativeness thresholds, in its previous 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. It had further noted section 45(1), which stipulates that an agreement concluded without an authorization document is null and void. While noting the "one agreement for one workplace or business" principle adopted by the Turkish legislation, the Committee had recalled that under a system of designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee highlighted that by allowing for the joint bargaining of minority unions, the law could adopt an approach more favourable to the development of collective bargaining without compromising the "one agreement for one workplace or business" principle. The Committee had requested the Government to take the necessary measures to amend the legislation, in consultation with the social partners, and to provide information in this respect. The Committee notes the Government's indication that the issue of the amendment of the collective bargaining system was discussed with the social partners within the framework of the project of "Improving Social Dialogue in Working Life" but no model could be agreed upon by everyone. The Government declares its readiness to consider the proposal for the amendment to the legislation if put forward by the social partners and if such a proposal represents a consensus. **Recalling that it is the responsibility of the Government to ensure the application of the Convention it had ratified, the Committee once again requests the Government to amend the legislation so as to ensure that if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. It requests the Government to provide information on all measures taken or envisaged in this regard.**

In its previous comment, the Committee had also 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) of Act No. 6356 that provide for a variety of situations in which the certificate of competence to bargain may be withdrawn by the authorities for a variety of reasons (the failure to call on the other party to start negotiations within 15 days of receiving the certificate of competence; the failure to attend the first collective bargaining meeting or failure to begin collective bargaining within 30 days from the date of the call; failure to notify a dispute to the relevant authority within six working days; failure to apply to the High Arbitration Board; failure to take a strike decision or to begin a strike in accordance with the legislative requirements; and failure to reach an agreement at the end of the term of strike postponement) 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 Government's indication that while no issues have been raised regarding the implementation in practice of the above-mentioned provisions it would consider their amendment if such a proposal is put forward by the social partners.

**Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. Material scope of collective bargaining.** The Committee had previously noted that section 28 of Act No. 4688, as amended in 2012, 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 reiterates its previous indication that the demands of the unions and their confederations that do not fall within the category of financial and social rights are received and considered at the other, more appropriate platforms established beside collective bargaining. The Committee is therefore bound to once again recall that public servants who 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 competent authorities' 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 again requests the Government to take the necessary measures to ensure the removal of restrictions on matters subject to collective bargaining so that the material scope of collective bargaining rights of public servants not engaged in the administration of the State is in full conformity with the Convention.**

**Collective bargaining in the public sector. Participation of most representative branch unions.** In its previous comment, the Committee had noted that pursuant to section 29 of Act No. 4688, the Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are parties to the Collective Agreements concluded in the public service. In this respect, the proposals for the general section of the Collective Agreement were prepared by the confederation members of PSUD and the proposals for collective agreements in each service branch were made by the relevant branch trade union representative member of PSUD. The Committee had also noted the observation of the Turkish Confederation of Public Workers Associations (Türkiye KAMU-SEN), indicating that many of the proposals of authorized unions in the branch were 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 and that this mechanism deprived the branch unions from the capacity to directly exercise their right to make proposals. Noting that although the most representative unions in the branch were represented in PSUD and took part in bargaining within branch-specific technical committees, their role within PSUD was restricted in that they were not entitled to make proposals for collective agreements, in particular where their demands were qualified as general or related to more than one service branch, the Committee had requested the Government to ensure that these unions can make general proposals. The Committee notes the Government's indication that collective bargaining is held every two years in order to discuss the issues that concern service branches and general issues together. On that occasion, collective bargaining offers for all service branches are determined separately by the authorized trade unions having the highest number of members in that service branch. Naturally, the proposals of the trade unions are determined exclusively for the service branches due to the differences in the service branches and the public servants within the scope of those branches and discussed in the special committees established separately for the service branches by the Heads of PED and PSUD. **Considering 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, the Committee again 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.**

*Collective bargaining in the public sector. Public Employee Arbitration Board.* In its previous comment, the Committee had noted that pursuant to sections 29, 33 and 34 of Act No. 4688, in case of failure of negotiations in the public sector, the chair of PED (the Minister of Labour) on behalf of public administration and the chair of PSUD on behalf of public employees, can apply to the Public Employees' Arbitration Board. The Board decisions were final and had the same effect and force as the collective agreement. The Committee had noted that seven of the 11 members of the Board including the chair were designated by the President of the Republic and considered that this selection process could create doubts as to the independence and impartiality of the Board. The Committee had therefore requested the Government to take the necessary measures for restructuring the membership of the Public Employee Arbitration Board or the method of appointment of its members so as to more clearly show its independence and impartiality and to win the confidence of the parties. The Committee notes that the Government confirms that in addition to the Head of the Board, its five other members with knowledge in public administration, public finances and public personnel regime, as well as one member among the academics proposed by the competent confederations, are appointed by the President. **The Committee requests the Government to consider reviewing, in consultation with the social partners, the method of appointment of the Board members so as to more clearly show its independence and impartiality and to win the confidence of the parties.** *[The Government is asked to reply in full to the present comments in 2020.]*

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

### Observation 2019

The Committee notes the observations of the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİSK), communicated with the Government's report. It further notes that the observations made by TİSK were supported by the International Organisation of Employers (IOE) in a communication received on 31 August 2017.

*Articles 1 to 3 of the Convention. Women's employment and job segregation. Gender wage gap.* In its previous comments, the Committee asked the Government to take proactive measures to address job segregation and to provide statistics on employment by sector and occupation disaggregated by sex. The Committee notes from the Labour Force Statistics published in March 2019 by the Turkish Statistical Institute that the employment rate of women above the age of 15 years was 29.1 per cent in 2018 and is 28.8 in 2019 (against 65.5 per cent and 62.4 per cent for men, respectively). The Committee notes that the 2016 statistics provided by the Government show both an important occupational gender segregation by sector of activity – horizontal occupational segregation (in 2016, women represented around 24 per cent of the workers in wholesale and retail trade, in transportation and storage, in information and communication, arts, entertainment and recreation, and in manufacturing; and 70.8 per cent of the workers in human health and social work activities and 52.8 per cent in education) and by level of occupation – vertical occupational segregation (in 2016, 15 per cent of the managers were women and they represented 41.2 per cent of workers in the elementary occupations). With respect to public employment, the Committee notes from the statistics provided by the Government that women represented only 37.31 per cent of all public personnel in 2016. The Committee further notes from the statistics provided by the Government that public employment is highly segregated by sex, as women are in a minority in all service classes, except in "Education and Training" (54.44 per cent) and "Health and Auxiliary Health Services" (66.29 per cent). The Committee notes from the information provided in the scope of the Programme "More and Better Jobs for Women" implemented by the ILO with funding from the Swedish International Cooperation Development Agency (SIDA) that the difference in average wages between men and women who are engaged in paid employment is 12.9 per cent overall and, that in sectors where the feminization rate is higher the hourly gender wage gap is also higher (for example, 56.6 per cent in health and 60.5 per cent in care services). The Committee recalls that some of the underlying causes of pay inequality have been identified as the following: horizontal and vertical occupational segregation of women into lower paying jobs or occupations and lower level positions without promotion opportunities; lower, less appropriate and less career-oriented education, training and skill levels; household and family responsibilities; perceived costs of employing women; and pay structures (General Survey of 2012 on the fundamental Conventions, paragraph 712).

The Committee notes from the TÜRK-İŞ's observations that differentiation in wages between female and male employees may be explained by the low level of wages in sectors where women commonly work (textile, food, tourism) and the level of women's education, their literacy rate and their low rate of participation in employment. The Committee notes from the Government's report that women benefit from vocational training courses, on-the-job and entrepreneurship training programmes organized by the Turkish Employment Agency (İSKUR) and that various programmes, including the Programme "More and Better Jobs Women", the "Engineer Girls Project", the "Women Masters Projects" (2016–17) and the Project on "Increasing Access of Women to Economic Activities", are being or have been implemented to increase employment opportunities and access to qualified employment for women and develop concrete solutions and policies in this regard. The Committee also notes that research and activities have been carried out on the development of childcare to better balance work and family responsibilities. In this respect, the Committee refers the Government to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In addition, the Committee wishes to stress the importance of regularly monitoring and assessing the results achieved with a view to reviewing and adjusting existing measures and strategies on reducing the gender pay gap. **Recalling that occupational segregation, with women in lower paying jobs or sectors, is an underlying cause of remuneration gaps and noting the steps already taken in this regard, the Committee asks the Government to: (i) increase its efforts to address effectively both vertical and horizontal occupational segregation of men and women in the labour market as well as gender stereotypes; (ii) promote the access of women to a wider range of occupations and to higher positions both in the public and the private sectors, including through the development of lifelong learning; and (iii) provide information on the impact of these measures on the employment rate of women and the occupational gender segregation by sector of activity and by level of occupation. The Committee also asks the Government to continue to provide statistics on occupation by sector and level of occupation disaggregated by sex and to provide any recent study or statistics available on the gender pay gap, by sector if possible.**

*Article 1(a) of the Convention. Additional emoluments. Family allowances.* Civil Service. The Committee recalls that section 203 of the Civil Servants Act, 1965, which provides that family allowances are paid to the father if both parents are civil servants, was being reviewed and in previous comments it has requested the Government to ensure that the new provision will adequately take the Convention into consideration and that the decision concerning which of the two parents will receive the family allowances is left to the parents in each case. It notes with **regret** that the Government indicates that no change was made to this section. The Committee recalls that, in order to ensure the application of the principle of equal remuneration for men and women for work of equal value, the definition of remuneration established by the Convention is to include all elements that workers may receive in exchange for their work and arising from their employment, regardless of whether the employer pays in cash or in kind, and directly or indirectly. The Committee draws the Government's attention to paragraph 693 of its General Survey of 2012 on the fundamental Conventions in which the possibility of allowing both spouses to choose which of them should receive the family allowances, rather than establishing the principle that they should be paid systematically to the husband. **The Committee asks the Government to take the necessary measures so that section 203 of the Civil Servants Act, 1965, is amended with a view to ensuring that men and women civil servants are entitled to family allowances on an equal footing. The Committee asks the Government to provide information on the progress made to this end.**

*Article 3. Objective job evaluation.* The Committee notes the information provided by TİSK describing the Metal Industry Job Evaluation System (MIDS), which has been in use for 35 years, and the current review of this system since it has become insufficient to meet the needs of the enterprises in the sector. In this regard, the Committee notes that, according to TİSK, the MIDS is a system based on the principle of "equal pay for equal work", which assesses jobs



according to 12 different factors under the four main factors (i.e. skill, responsibility, effort and business conditions). The Committee would like to recall that the concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as 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 General Survey of 2012, paragraph 673). **The Committee asks the Government to continue to take steps to develop and promote the use of objective job evaluation methods in all sectors and to ensure that the principle of equal remuneration for men and women for “work of equal value”, and not only for “equal work”, is made an explicit objective of such an evaluation method. The Committee also asks the Government to provide information on the review of the Metal Industry Job Evaluation System mentioned by TİSK, including details on the criteria and the principle established and any results obtained in terms of wage adjustments, as well as information on any other job evaluation system currently used in other sectors of the economy.**

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

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

### Observation 2019

The Committee notes the observations of the Turkish Confederation of Employer Associations (TİSK) received on 31 August 2017 which were supported by the International Organisation of Employers (IOE) and the Government's reply thereto. The Committee also notes the observations of Education International (EI) and the Education and Science Workers' Union of Turkey (EGITIM SEN) received on 1 September 2017 and the Government's reply thereto. It further notes the observations of the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) and the Confederation of Turkish Trade Unions (TÜRK-İS) which were attached to the Government's report.

*Articles 1 and 4 of the Convention. Discrimination based on political opinion. Activities prejudicial to the security of the State.* In its previous comments, the Committee had noted with deep regret that the Government had not provided any information on the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers expressing their political opinions. **Noting that the Government did not provide the required information, the Committee firmly urges the Government to provide information on the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers, as well as on all the cases brought before the courts against them, indicating the charges brought and the outcome.**

*Massive dismissals in the public sector: civil servants, teachers and members of the judiciary.* The Committee notes the observations of EGITIM SEN alleging the arbitrary dismissals of hundreds of its members (1,546 as of August 2017) from their teaching positions without any proof and without any court hearing; more than 300 were dismissed from their university positions because they had been critical of the Government and signed a petition in this regard. It also notes that, according to Türkiye Kamu-Sen, in 2015, 75,000 head teachers lost their jobs overnight (50,000 of these were members of EGITIM SEN). The Committee notes the Government's indication in its report that the dismissals of civil servants, members of the judiciary and teachers took place after the coup attempt in July 2016, “on the grounds of membership, affiliation or connection with a terrorist organization”. The Government adds that under the Penal Code and the Public Servants Law (Law No. 657), public officials who have been under investigation on charges of membership of a terrorist organization or an offense against constitutional order can be suspended from their posts, because “their conducting public duties constitutes a major threat to the security of public services, causing the disruption of it”. The Government emphasizes that the criteria of loyalty to the State has to be met by civil servants. It also indicates that it has adopted several state of emergency decrees, including Decree-Law No. 667 on measures taken within the scope of state of emergency stating that “members of the judiciary, including the Constitutional Court, and all State officials shall be dismissed from the profession or the public service, if they are considered to have an affiliation, membership, cohesion or connection to terrorist organizations or to groups, formations or structures determined by the National Security Council to be engaged in activities against the national security of the State”. Members of the judiciary who have been expelled from the profession can file a complaint before the Council of State. The Government adds that, pursuant to Emergency Decree-Law No. 6851, a commission to review the actions taken under the scope of state of emergency (hereafter the Inquiry Commission) has been established for a term of two years to assess and decide upon applications lodged by public servants, through the governorates or the last institution in which they were employed, against expulsion from their profession, cancellation of fellowship, dissolution of organizations, or the reduction in ranks in the case of retired personnel. According to the Government, the examination of complaints takes place on the basis of the documents that are in the file, and the decision of the Inquiry Commission is subject to judicial review by the courts.

The Committee notes from the Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the impact of the state of emergency on human rights in Turkey (January–December 2017), that “following the coup attempt [July 2016] at least 152,000 civil servants were dismissed, and some were also arrested, for alleged connections with the coup, including 107,944 individuals named in lists attached to emergency decrees” and over “4,200 judges and prosecutors were dismissed”. The OHCHR's report also indicates that “an additional 22,474 people lost their jobs due to closure of private institutions, such as foundations, trade unions and media outlets” (paragraph 8). The Committee notes that the OHCHR observed that “dismissals were accompanied by additional sanctions applied to physical persons dismissed by decrees or through procedures established by decrees”, including a lifelong ban from working in the public sector and in private security companies and the systematic confiscation of assets and the cancellation of passports (paragraph 68). According to the OHCHR's report, “[d]ismissed people lost their income and social benefits, including access to medical insurance and retirement benefits”. Finally, the Committee notes the concern expressed by the OHCHR that “the stigma of having been assessed as having links with a terrorist organization could compromise people's opportunities to find employment” (paragraph 70).

The Committee also refers the Government to its 2018 observation, under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on the massive dismissals that took place in the public sector under the state of emergency decrees, and to the discussion that took place in the Conference Committee on the Application of Standards (CAS) in June 2019 on the application by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee recalls that, under *Article 1(1)(a)* of the Convention, discrimination on the basis of political opinion is prohibited in employment and occupation. It also recalls that in paragraph 805 of its General Survey of 2012 on the fundamental Conventions, the Committee indicated that protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and in respect of political affiliation. The Convention allows for exceptions, including measures warranted by the security of the State under *Article 4*, which are not deemed to be discrimination and must be strictly interpreted to avoid any undue limitations on the protection against discrimination. The Committee also recalls that it indicated in paragraphs 833–835 of its General Survey of 2012 that such measures “must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken” and they “become discriminatory when taken simply by reason of membership of a particular group or community”. As “the measures refer to activities qualifiable as prejudicial to the security of the State, [t]he mere expression of opinions or religious, philosophical or political beliefs is not a sufficient basis for the application of the exception. Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of *Article 4*. ... All measures of state security should be sufficiently well defined and precise to ensure that they do not become instruments of discrimination on the basis of any ground prescribed in the Convention. Provisions couched in broad terms, such as ‘lack of loyalty’, ‘the public interest’ or ‘anti-democratic behaviour’ or ‘harm to society’ must be closely examined in the light of the bearing which the activities concerned may have on the actual performance of the



job, tasks or occupation of the person concerned. Otherwise, such measures are likely to entail distinctions and exclusions based on political opinion ... contrary to the Convention." In addition, the Committee recalls that "the legitimate application of this exception must respect the right of the person affected by the measures 'to appeal to a competent body established in accordance with national practice'". The Committee also recalls that "it is important that the appeals body be separate from the administrative or governmental authority ... offer a guarantee of objectivity and independence, and ... be competent to hear the reasons for the measures taken against the appellant and to afford him or her the opportunity to present his or her case in full".

**The Committee urges the Government to take appropriate steps to ensure that the requirements of the Convention are fully adhered to, taking into account the various criteria explained above. The Committee asks the Government to continue to provide information on the number of dismissals in the public sector, including teachers, that have taken place for reasons linked to the security of the State. The Committee further asks the Government to continue to provide information on the total number of appeals reviewed by the Inquiry Commission or by the courts, and their outcome, and to indicate whether in the course of the proceedings dismissed employees have the right to present their cases in person or through a representative. The Committee further asks the Government to provide information on the number of complaints brought by dismissed employees alleging discrimination on the ground of political opinion.**

**Recruitment in the public sector.** The Committee notes the Government's indications regarding the recruitment of personnel in the public sector, in reply to its previous request regarding the allegations made by the Confederation of Public Employees Trade Unions (KESK) regarding discrimination against civil servants (the recording in personnel files of inappropriate data, discriminatory use of promotion and appointments, and of the rewards system) and to the lack of adequate sanctions in the event of discrimination. The Committee notes that the Government indicates that, for a first appointment or a reappointment in the public sector, a "security investigation" and an "archival research" have to be conducted in strict confidentiality at every stage. According to the Government, it is therefore not possible to give information to individuals or institutions other than the institution requesting the investigation. The Government adds that recruitment in public institutions and organizations is made through a merit-based central examination and placement procedure. The Committee notes from the observations made by Türkiye Kamu-Sen that appointment and promotion practices by way of oral examination or interviews work in favour of unions close to the Government and subject members of other unions to discrimination. The union adds that "while it has been recorded in court judgments ... that the interviews were not a fair means of evaluation", and "the Government still does not implement these court decisions and continues to discriminate". **The Committee asks the Government to take appropriate steps to ensure that, in practice, recruitment in the public sector is taking place without discrimination based on the grounds set out in the Convention, in particular political opinion. The Committee also asks the Government to ensure that victims of discrimination in recruitment and selection in the public sector have effective access to adequate procedures to review their case and to appropriate remedies. The Government is asked to provide information on any existing procedure allowing for an appeal against a negative decision in the recruitment process, the number and outcome of such appeals, and the effective implementation of court decisions relating to discrimination in recruitment and selection in the public sector.**

**Articles 1 and 2. Protection of workers against discrimination in recruitment. Legislation.** For a number of years, the Committee has been referring to the fact that section 5(1) of the Labour Code, which prohibits any discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect, or similar reasons in the employment relationship, does not prohibit discrimination at the recruitment stage. The Committee notes with **satisfaction** the adoption, in April 2016, of the Law on the Human Rights and Equality Institution of Turkey (Law No. 6701) which, in article 6, prohibits discrimination on the basis of gender, race, colour, language, religion, faith, sect, philosophical or political opinion, ethnic origin, wealth, birth, civil status, medical condition, disability or age, during the application, recruitment and selection processes, in employment and for termination of employment, and with respect to job advertisements, working conditions, vocational guidance, access to vocational training, retraining, on-the-job training, "social interests and similar subjects." According to article 6(3) of the Law, it is prohibited for employers or their representatives to reject a job application due to pregnancy, motherhood or childcare. The Committee notes that labour contracts or contracts for services which are excluded from the scope of labour legislation, and self-employment are covered by the provisions of article 6 of Law No. 6701. The Committee also welcomes the inclusion of employment in public institutions and organizations within the scope of this article. **The Committee asks the Government to provide information on the application in practice of article 6 of Law No. 6701 and, in particular, to indicate if any complaints by workers or any labour inspection reports were made under article 6, and their outcome.**

**Article 2. Equality between men and women. Vocational education and training and public and private employment.** The Committee recalls that in its previous comments, it has underlined the need to promote the access of women to adequate education and vocational training and to increase their participation in the labour force and in the public sector. With respect to the employment of women in the public service, the Committee notes the Government's indication that their participation has substantially increased due to temporary arrangements regarding working time and unpaid leave made available to mothers and fathers. As regards the private sector, it further notes that, according to the labour force statistics of February 2019, the labour force participation rate for women was 34 per cent (against 33.3 per cent in February 2018). The Committee notes that in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about "the persistence of deep-rooted discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society", which "overemphasize the traditional role of women as mothers and wives, thereby undermining women's social status, autonomy, educational opportunities and professional careers". The CEDAW also noted with concern that "patriarchal attitudes are on the rise within State authorities and society" and expressed concern "about the high dropout rate and underrepresentation among girls and women in vocational training and higher education, in particular in deprived rural areas and refugee communities" (CEDAW/C/TUR/CO/7, 25 July 2016, paragraphs 28 and 43). The Committee welcomes the detailed information provided by the Government in its report, on the numerous programmes, projects, measures and activities developed and implemented with a view to promoting gender equality, including awareness-raising initiatives to fight against gender stereotypes and violence against women, strategies to reconcile work and family responsibilities such as the development of kindergartens and the provision of support for child care, vocational training programmes for women in non-traditional fields, on-the job and entrepreneurship training programmes. The Committee notes that the Government also mentions the adoption of a Women's Employment Action Plan (2016–18) within the framework of the programme entitled "More and better jobs for women: Women's empowerment through decent work in Turkey" implemented jointly by the ILO and the Turkish Employment Agency (ISKUR) and financed by the Swedish International Development Agency (SIDA). The Government adds that the Action Plan aims to increase women's vocational skills and their means of access to the labour market and that 81 Provincial Gender Representatives, who received gender training, were appointed to monitor and report on its implementation together with the staff of ISKUR. The Committee also notes from the observations made by the TISK that, according to the labour statistics, "one of the issues that needs to be addressed in order to facilitate the access of women to the labour market is education". The TISK adds that, given the large number of women employed in the informal economy – in particular in agriculture – "priority must be given to the policies which will decrease undocumented work or informal employment of working women". The TISK further points out that one of the main obstacles for women entering employment and on progressing in their career is the difficulties they face in reconciling work and domestic duties and that, despite the efforts made, there are not enough childcare institutions. **Noting the encouraging developments regarding the promotion of gender equality in employment but also the very slow increase in the labour force participation rates for women, the Committee asks the Government to step up its efforts and continue taking specific measures, including within the framework of the ILO–ISKUR–SIDA programme, to promote the access of women to adequate education and vocational training and formal and paid employment, including to higher level positions. The Committee also asks the Government to provide information on the results achieved through the Women's Employment Action Plan for 2016–18, including statistics disaggregated by sex showing the evolution of women's employment in both the public and the private sectors. The Committee asks the Government to take proactive measures to actively combat persistent gender stereotypes and stereotypical assumptions regarding women's aspirations, preferences and capabilities and "suitability" for**

**certain jobs and their role in society, and to continue to take steps to enable women – who continue to bear the unequal burden of family responsibilities – to reconcile work and family responsibilities, including through the development of childcare and family facilities and support and by the removal of administrative obstacles to which the Government refers in this regard.**

*Dress code.* The Committee welcomes the Government's indication that further to the amendment in 2013 and 2016 of the Regulations on the dress code of personnel employed in public institutions, security organizations and armed forces, women working in these institutions and organizations are now allowed to work with a headscarf. The Committee hopes that the Government will continue to ensure that all persons working in public institutions, security organizations and armed forces continue to enjoy protection against religious discrimination on the basis of a dress code.

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

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

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

## C127 - Maximum Weight Convention, 1967 (No. 127)

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

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

## C167 - Safety and Health in Construction Convention, 1988 (No. 167)

## C176 - Safety and Health in Mines Convention, 1995 (No. 176)

## C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

### Observation 2019

In order to provide a comprehensive view of the issues relating to the application of ratified occupational safety and health (OSH) Conventions, the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection), 119 (guarding of machinery), 127 (maximum weight), 155 (OSH), 161 (occupational health services), 167 (OSH in construction), 176 (OSH in mining) and 187 (promotional framework for OSH) together.

It notes the observations of the Turkish Confederation of Employers' Associations (TISK), communicated with the Government's report on Conventions Nos 115, 119, 127, 155, 161 and 187.

*Articles 2, 3, 4(3)(a) and 5 of Convention No. 187, Articles 4, 7 and 8 of Convention No. 155, Article 1 of Convention No. 115, Article 16 of Convention No. 119, Article 8 of Convention No. 127, Articles 2 and 4 of Convention No. 161, Article 3 of Convention No. 167 and Article 3 of Convention No. 176.* Continuous improvement of occupational safety and health in consultation with the most representative organizations of employers and workers and the national tripartite advisory body. National OSH policy and programme. The Committee previously noted the Government's indication that the tripartite National Occupational Safety and Health Council (National OSH Council) met twice a year, and had the objective of advising the Ministry of Family, Labour and Social Security and the Government on developing policies and strategies to improve OSH conditions. It also noted the adoption of the National OSH Policy (III) and National Action Plan for the period 2014–18, which included objectives related to the development of an occupational accident and disease statistics and recording system and the improved performance of occupational health services.

The Committee notes with **concern** the Government's indication in its report that the last meeting of the National OSH Council was held in June 2018 and that the review of the National OSH Policy and Action Plan for 2014–18, and the adoption of a new OSH Policy and Action Plan for 2019–23, are still pending. The Committee recalls that the previous Regulations on the National OSH Council of 2013 specified that its composition included 13 representatives from the social partners (and 13 from public institutions), and it notes the Government's indication that, pursuant to Decree-Law No. 703 of 2018, the National OSH Council will be reorganized and its new members will be nominated by the President. The Government also provides information, in response to the Committee's request, on the progress achieved with respect to the annual performance indicators in each of the seven objectives set out in the National Action Plan 2014–18. The Committee further notes the Government's reference to tripartite meetings in the construction and mining sectors, and the observations made by the TISK on the application of Convention No. 155 stating that steps are being taken to improve social dialogue in the area of OSH. **The Committee requests the Government to provide information on the review undertaken of the National OSH policy and Action Plan for the period 2014–18, including the evaluation of the progress made with the performance indicators, as well as the formulation of a new OSH policy and programme for the subsequent period. It requests the Government to provide information on the consultations held with the most representative organizations of employers and workers in this respect. It further requests the Government to provide information on the re-establishment of the National OSH Council and to indicate if it includes representatives of employers' and workers' organizations.**

*Articles 2 and 3 of Convention No. 187 and Article 4 of Convention No. 155. Prevention as the aim of the national policy on OSH.* In its previous comments, the Committee noted the proposed measures in the National OSH Policy Document III (2014–18) to reduce occupational accidents in the metal, construction and mining sectors.

The Committee welcomes the detailed information provided by the Government, in response to its request, on the application in practice of Conventions Nos 167 and 176, including the number of occupational accidents and fatal occupational accidents. The Committee notes the Government's indication that, while desired levels in the performance indicators in the National Policy Document III (2014–18) have not been reached, efforts to reduce occupational accidents and occupational diseases continue. The Government states that there are plans to revise the relevant targets and indicators in the preparation of the 2019–2023 Action Plan to provide for more effective actions, after the restructuring of the National OSH Council. In this regard, the Committee also welcomes the information provided by the Government concerning several activities in the construction sector to reduce occupational accidents and the Government's reference to the imminent launch of a major project to improve OSH in the mining sector. It also notes with **concern** the Government's indication that, in 2017, there were 587 fatal occupational accidents in the construction sector and 86 such accidents in the mining sector. **The Committee requests the Government to continue to take measures to reduce occupational accidents in the sectors and workplaces where workers are particularly at risk (particularly in the metal, mining and construction sector and where workers use machinery). It requests the Government to continue to provide detailed information on the number of occupational accidents, including fatal occupational accidents, in all sectors and workplaces. It also requests the Government to provide information regarding occupational diseases, including the number of cases of occupational disease recorded and, if possible, disaggregated by sector, age group and gender.**

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 2021.]**

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

*Observation 2019*

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

*Article 1 of the Convention. Massive dismissals of public servants.* The Committee had previously noted that following the coup attempt in July 2016, a great number of public servants, including an unknown number of trade union representatives, were dismissed on the basis of emergency decrees. In these circumstances, the Committee had requested the Government to ensure that workers' representatives were 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 acted in conformity with existing laws. In case of existence of grounds to believe that a workers' representative had been involved in illegal activities, the Committee had requested the Government to ensure that all guarantees of due process were fully afforded. The Committee had further requested the Government to provide statistical information on the number of union representatives affected by the dismissals and suspensions based on emergency decrees. The Committee had noted the establishment, for a two year period, of an ad hoc Inquiry Commission to review the dismissals based on the state of emergency decrees and, in this respect, noted with concern that the Commission would have to deal with a very significant caseload in a relatively short period of time. The Committee had requested the Government to ensure that the Inquiry Commission was accessible to all dismissed workers' representatives who desire its review, and that it was endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee had further requested the Government to ensure that the dismissed workers' representatives did 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 had requested the Government to provide statistical information on the number of applications lodged and processed in the Inquiry Commission and administrative courts by affected workers' representatives and to indicate the outcome of those procedures.

The Committee notes the Government's indication that the dismissal of public servants from public service, which may include some trade union representatives, by the state of emergency decrees, is based on the grounds of their membership, affiliation or connection to terrorist organizations, following the coup attempt in 2016. It reiterates that after the coup attempt, the Government issued state of emergency decrees to eliminate the influence of terrorist organizations, such as FETO, PKK or ISIS (DAISH). According to the Government, these terrorist organizations, in particular the one that perpetrated the said coup attempt to overthrow the democratically elected legitimate government in Turkey, established themselves within the state structure of the central and local government institutions and agencies, particularly in the armed forces, police, judiciary and educational institutions. The Government further reiterates that public servants are obliged, on the one hand, to carry out their duties with loyalty to the Constitution and the existing laws, in a manner respecting the principles of objectivity and equality, while on the other, not to join or assist any movement, group, organization or association that carry out illegal activities. It points out that being a public servant or a trade union member or representative or even a trade union officer will not ensure immunity from prosecution for illegal activities. The Government further explains that dismissal or suspension procedures of the public servants who are deemed to be member or affiliate of or in liaison or cohort with the terrorist organizations or the structures, entities or groups that are considered by the National Security Council as operating against the national security of the State are conducted in conformity with the provisions of the State of Emergency Act No. 2935 and Civil Servants Act No. 657 and the Decrees with the Force of Law. The Government refers in this respect to the judgement of the Constitutional Court of Turkey in a case involving the dismissal of two members of its court: "although the coup attempt was *de facto* prevented, taking measures in order to eliminate the dangers against the democratic constitutional order, fundamental rights and freedoms and national security, and to prevent future attempts is not only within the scope of the state's authority, it is also a duty and responsibility towards individuals and society that cannot be postponed [...] in some cases, it may not be possible for the state to eliminate the threats against democratic constitutional order, fundamental rights and freedoms and national security through ordinary administrative procedures. Accordingly, it may be necessary to impose extraordinary administrative procedures until these threats are eliminated".

The Government explains that the Inquiry Commission was established to ensure that those affected by the state of emergency decrees enjoyed due process of law. Public servants dismissed directly by a decree with the force of law can apply to the Commission and the applicants whose application is rejected by the Commission may bring their case to the competent administrative courts. The Government reiterates that a dismissal through a decree with the force of law is a measure applied only during the state of emergency and all of the judicial recourse avenues are open against the decisions of the Inquiry Commission through the judicial system, including the Constitutional Court of Turkey and the European Court of Human Rights. The Inquiry Commission's period of office is renewable by one year after the initial two-year period. Hence, the operation of the Commission will continue until its work has been fully carried out. All dismissed public servants, including trade union representatives, have the right to apply to the Inquiry Commission for a review of their dismissals; the only exception being the members of the judiciary whose application should be made to the judicial bodies indicated in the relevant decree and law. The Commission's activities can be followed by the public through its announcements on its web page. Apart from its seven members, the Commission employs a total of 250 persons, 80 of whom are judges, experts and inspectors employed as rapporteurs. A data processing infrastructure for the application process has been established and all information is recorded in this system. The Commission examines cases on the basis of documents provided by the relevant public institutions. The decisions delivered by the judicial authorities are followed up through National Judiciary Informatics System (UYAP) system.

Following the examination, the Commission may dismiss or accept the application. In case of acceptance of the application concerning those who were dismissed from the public service, profession or organization, the decision is notified to the public organization/institution where the applicant was last employed for his/her reinstatement within 15 days. In case of a rejection, the applicant can have recourse to the competent administrative courts. With regard to burden of proof, the Commission demands from the relevant institution to submit the documents and information showing the applicant's membership, affiliation or connection to a terrorist organization. If no such document and information is provided and no investigation or prosecution exists about the applicant, then the Commission accepts the application for reinstatement. The decisions of the Commission are transmitted to the relevant institution or organization, which then appoints the person whose reinstatement was pronounced. The Council of Judges and Prosecutors may bring an annulment action before the Ankara

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Administrative Court against the decision of the Commission and the relevant institution or organization within a period of 60 days as from the date of notification of the decision.

The Government indicates that the Commission delivers individualized and reasoned decisions in respect of approximately 1,200 applications per week. It informs that 131,922 measures were taken through the state of emergency decrees, including the dismissal from public service of 125,678 persons. As of 29 August 2019, the Commission pronounced itself on 84,300 applications out of 126,200 applications received. Among these 84,300 applications examined, 77,600 were rejected. Currently, there are 41,900 applications still pending. The Government points out that 6,700 persons were reinstated. The Government indicates that no statistical information is available on the number of trade union representatives affected and the number of applications to the courts. The Government emphasizes that the Commission undertakes its work with no other intention than to protect the democratic constitutional order, rule of law and the rights of individuals and works in a transparent manner respecting the rights of individuals. According to the Government, due process of law is functioning well and every dismissed public servant has access to legal remedies.

The Committee takes note of the information provided by the Government. 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 in this respect it had requested the Government to ensure that the dismissed workers' representatives did not bear alone the burden of proving that the dismissals were discriminatory. ***While noting the information provided by the Government in this respect, the Committee requests it to provide further details on the handling of cases where workers' representatives allege before the Inquiry Commission or the administrative court that they were subject to a dismissal based on their legitimate trade union activity or affiliation.*** The Committee notes with *regret* that no statistical information is available on the number of trade union representatives affected and the number of applications made by them to courts and points out that this information is crucial in order to assess whether the protection of workers' representatives afforded by the Convention is effectively ensured. ***Noting the detailed information provided by the Government regarding the data processing system established for the purpose of the Inquiry Commission, the Committee urges the Government to take the necessary measures in order to ensure that it allows to retrieve information on the number of trade union representatives affected. The Committee once again requests the Government to provide this information and to indicate, in particular, the number of trade union representatives reinstated following the decision of the Commission and the number of appeals to the administrative courts, as well as the outcome of such appeals.***



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

### Observation 2019

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019.

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

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

The Committee noted that the International Organisation of Employers (IOE), in its observations of 2016, expressed high concern at the reported practices of forced labour in cotton production which affected farmers, businesses and private and public sector workers, under threat of punishment for the lack of fulfilment of production quotas. Moreover, the observations made by the ITUC in 2016 highlighted the practices of forced mobilization by the Government of employees of a wide range of private and public sector institutions to pick cotton, including education and healthcare institutions, municipal government offices, libraries, museums, meteorological agencies, cultural centres, sports organizations, utility, manufacturing, construction, telecommunications and fishing companies. Those who refused faced administrative penalties, including public censure, docked pay and termination of employment. In this regard, the Committee noted the Government’s statement that, in certain regions of the country, local government and agricultural producers, together with local employment services, organized voluntary recruitment from among those registered during the seasonal cotton harvest in order to provide seasonal employment to that sector of the population.

The Committee further noted from the report of the ILO Technical Advisory Mission of September 2016 that although representatives of international organizations and foreign embassies that the mission met with indicated that the practice of forced labour existed, in most cases they did not have direct proof of this as it was difficult to access the cotton fields. The mission report took note of the various national strategies and action plans developed by the Government, including the National Human Rights Action Plan (2016–20); the National Action Plan to Combat Trafficking in Persons (2016–18); the UN Partnership Framework for Development signed in April 2016; and the Sustainable Development Goals (SDGs) adopted in September 2016. It also took due note of the political will demonstrated by the Government to address the issue of forced labour in cotton harvesting in the country. The Committee urged the Government to continue to collaborate with the ILO with a view to eliminating, in law and in practice, forced labour in connection with the state-sponsored cotton harvesting.

The Committee notes from the recent observations made by the ITUC that in November 2018 workers in all sectors of the national economy were sent to the cotton fields, some even sent to remote districts hundreds of kilometres away from their homes. For the first time in 15 years, teachers were forced to spend their nine-day fall break picking cotton. In the region of Mary, an estimated 70 per cent of the teachers were required to pick cotton during the 2018 harvest season. The ITUC also states that people worked from early morning until dusk with a 30–60 minute break for lunch and in the evening they were bussed back to the city. People who were sent away to the fields for ten or more days stayed in a temporary base with an earth floor and without sanitation facilities. Farmers were required to produce a large cotton yield and were expected to meet the state quotas and pay the workers that were forced to work by the Government to pick cotton. Authorities threatened farmers with loss of land if they did not meet government-imposed quotas.

The Committee notes the Government’s information in its report that the Decision of the Public Council adopted in September 2018 aims to improve the working methods in the agricultural sector and place work in this field on a modern footing and provide for the broad recruitment of private producers in agriculture. According to this Decision, plots of land shall be offered on a contractual basis to joint stock companies, family farms and other legal entities and producers for use for a period of 99 years for the production of crops like wheat and cotton. The Committee also notes the Government’s information that it has resorted to using cotton harvesting machines to pick cotton and hence there is no need for the mass recruitment of human resources for this purpose. The Government indicates that during the harvesting season in 2017, 1,200 harvesting machines were used and in 2018, 500 additional machines were purchased from Uzbekistan and a contract for 200 such machines were concluded with a company that manufactures agricultural equipment. The Committee further notes the Government’s information that together with the social partners, a draft cooperation programme has been developed and submitted to the ILO for consideration. This draft sets out measures for the implementation of international rules and standards, decent work, fair pay and social protection, and the active participation of social partners on issues of decent work and employment. The Committee notes, however, that this draft cooperation programme has not been agreed upon.

The Committee notes that the UN Committee on Economic, Social and Cultural Rights, in its concluding observations of October 2018, expressed concern at the reported continued widespread use of forced labour among workers and students under threat of penalties during the cotton harvest (E/C.12/TKM/CO/2, paragraph 23). It also notes from the Summary of Stakeholders’ submissions of February 2018 to the UN Human Rights Council that people forced to pick cotton had been compelled to sign declarations on “voluntary” participation in the harvest (A/HRC/WG.6/30/TKM/3, paragraph 49). While taking due note of the measures taken by the Government, the Committee must express its **concern** at the continued practice of forced labour in the cotton sector and the poor working conditions of workers employed in this sector. **The Committee therefore urges the Government to continue to take measures to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students, in cotton farming, and requests it to provide information on the measures taken to this end and the concrete results achieved, with an indication of the violations detected and the sanctions applied. In this regard, the Committee strongly encourages the Government to continue to avail itself of ILO technical assistance, with a view to eliminating, in law and in practice, forced labour in connection with the state-sponsored cotton harvesting as well as to improve recruitment and working conditions in the cotton sector.**

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

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

### Observation 2019

*Article 3(2) of the Convention. Determination of hazardous work.* The Committee previously noted the Government’s indication that a list of work and

occupations with harmful and hazardous working conditions prohibited to children under 18 years was being developed. It requested the Government to provide information on any progress made with regard to the finalization and adoption of this list.

The Committee notes with **satisfaction** that the Ministry of Labour and Social Protection, in agreement with the Ministry of Health and Medical Industry and the State Standards Service, adopted Decree No. 87 of 2018 which contains a comprehensive list of hazardous types of jobs and occupations that are prohibited to children under the age of 18 years. This list contains 42 sectors with more than 2600 activities including: work related to carrying or moving weights; work in underground mines, tunnels, open pits; metal and non-metal production and processing-related works; work in power plants, thermal power plants, electricity; drilling oil, gas, petroleum and its production; chemical production; work in shipyards and aviation industry; construction works; forestry; wood processing, textile and garments; paper and pulp industries; leather works; food industry; production of alcoholic products; communication; agriculture; handicrafts, jewellery and art works; healthcare sector and municipal services. **The Committee requests the Government to provide information on the application in practice of Decree No. 87 of 2018, including statistics on the number and nature of violations reported and penalties imposed.**

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

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

### Observation 2019

The Committee notes the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2019.

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work in the cotton sector.* In its previous comments the Committee noted the Government's information that the provisions under the Education Act of 2013 and the Rights of the Child (State Guarantees) Act of 2014, require children to attend school until the age of 18 and not to be involved in any work, including agricultural work that stops them from attending school. It also noted from the report of the ILO Technical Advisory Mission that took place in Ashgabat in September 2016, the statement made by the Minister of Education that children under the age of 18 years are fully engaged in education in Turkmenistan. Moreover, the statements made by the international organizations and foreign embassies that the mission met with, indicated that there were no reports of child labour in the cotton harvest, although access to the cotton fields was difficult.

The Committee notes the observations made by the ITUC that there were numerous cases of child labour reported during the 2017 cotton harvest season. According to the ITUC, during this period, in the Ruhabat and Baharly districts, there were secret orders that mobilized children into the fields during their fall break and there were "truckloads" of children sent to pick cotton. Massive use of child labour in the Mary, Lebap and Dashoguz regions were reported. The ITUC is of the view that, due to the centrally imposed quotas, local officials feel immense pressure and resort to forced labour and child labour. However, the Committee also notes the ITUC's statement that there were efforts by the Turkmen Government to keep children out of the fields in 2018. While *Turkmen.news*' (an independent news and human rights organization) monitors witnessed some children in the cotton fields, these seemed to be isolated cases instead of the previous systematic use of child labour.

In this regard the Committee notes the Government's information in its report of 26 February 2018, submitted to the United Nations Human Rights Council that it has adopted national measures to prohibit child labour, particularly in the cotton sector and that during school year, children may not be hired to perform agricultural work that hinders their studies. Furthermore, officials of educational institutions are subject to disciplinary action under labour law for the use of child labour in educational institutions in any activity, including agriculture (A/HRC/WG.6/30/TKM/1, paragraphs 209–212). **The Committee therefore strongly encourages the Government to continue taking effective measures to ensure that children under 18 years are not engaged in hazardous work or subject to forced labour in the cotton sector, including during the school holidays or their time out of school. It requests the Government to provide specific information on the steps taken in this regard, including measures to enforce the relevant legislation prohibiting children's involvement in the cotton harvest, and on any offences reported, investigations conducted, violations found and penalties imposed.**

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

# C081 - Labour Inspection Convention, 1947 (No. 81) / C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

## Observation 2019

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 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of these Conventions, received on 29 August 2019.

*Articles 4, 6, and 7 of Convention No. 81 and Articles 7, 8 and 9 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 previously noted the assumption of labour inspection functions by “authorized officials” within local authorities, in addition to the State Labour Service (SLS). It requested the Government, in line with the 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference, to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. In this regard, the Committee once again notes the information provided by the Government in its report on the efforts made to avoid duplication of inspections between the SLS and local authorities. The Committee also notes the information provided by the Government regarding trainings conducted by the SLS with labour inspectors in local authorities. In response to the Committee’s previous comments on the recruitment of these authorized officials, including the qualifications required, the Committee notes the Government’s indication that, to receive a service certificate as a labour inspector, it is necessary for officials to submit information on qualifications and work experience to the SLS, and that, as of January 2019, there were 1,258 labour inspectors with a service certificate, out of which 531 work for local authorities. The Committee nevertheless notes that the Government has not provided a reply concerning the legal provisions governing the status and conditions of service of these authorized officials, the qualifications required for their recruitment or whether there are regular competitions to recruit them, as there are for SLS inspectors. The Committee recalls that the Committee on the Application of Standards recommended in its 2018 conclusions that the Government ensure that the status and conditions of service of labour inspectors guarantee their independence, transparency, impartiality and accountability in line with the Conventions. **The Committee therefore urges the Government to indicate the measures taken to ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS. The Committee once again requests the Government to indicate the legal provisions governing the status and conditions of “authorized officials” working as labour inspectors (Article 6 of Convention No. 81 and Article 8 of Convention No. 129), and how it is ensured that their status and conditions of service are such as to guarantee their independence from any improper external influence. The Committee also requests further information on the manner in which it is ensured that “authorized officials” working as labour inspectors have adequate qualifications for the effective performance of inspection duties (Article 7(1) of Convention No. 81 and Article 9(1) of Convention No. 129). In this regard, the Committee requests information related to the labour inspectors working for local authorities, including the number of local authorities employing these inspectors and the number of inspectors at each authority; the compensation levels and tenures of employment for local authority labour inspectors compared with SLS inspectors; and whether training programmes for SLS inspectors are also required for local authority inspectors.**

*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 requested information on the filling of the vacant labour inspector posts, measures taken to improve the budgetary situation of the SLS, and the material resources at the central and local levels of the SLS. In this regard, the Committee welcomes the Government’s indication that, as of 1 January 2019, the number of labour inspectors is 710 (up from 615 inspectors noted in 2018) for 1,003 existing posts (up from 904 noted in 2018). The Committee observes, however, an absence of information on the material resources at the central and local levels of the SLS. **The Committee therefore requests the Government to take measures to provide sufficient material resources (offices, office equipment and supplies, transport facilities and reimbursement of travel expenses) at the central and local levels of the SLS. The Committee urges the Government to pursue its efforts to fill vacant posts for labour inspectors, and to continue to provide statistics on the number of labour inspectors.**

*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. 1. Moratorium on labour inspection.* The Committee previously noted with deep concern that a moratorium was imposed on labour inspection between 1 January 2018 and 22 February 2018. In this respect, it notes the Government’s statement that the law introducing the moratorium on state supervision expired on 1 January 2019 and that there is currently no moratorium on labour inspections. **The Committee expresses the firm hope that no further restrictions of this nature will be placed on labour inspection in the future.**

*2. Other restrictions.* The Committee previously noted that Act No. 877 of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity (Act No. 877) and Ministerial Decree No. 295 on the procedure for state control and state supervision of compliance with labour legislation of 2017 (Decree No. 295), provide for several restrictions on the powers of labour inspectors. These include restrictions with regard to: (i) 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); (ii) the frequency of labour inspections (section 5(1) of Act No. 877); and (iii) the discretionary powers of labour inspectors to initiate prompt legal proceedings without previous warning (sections 27 and 28 of Decree No. 295). The Committee urged the Government, in line with the 2018 conclusions of the Committee on the Application of Standards, to take the necessary measures and appropriate reforms to bring the labour inspection services and the legislation into conformity with the Conventions.

The Committee notes with **deep regret** that the Government has not replied to the Committee’s request in this respect. The Committee also notes the observations of the KVPU according to which, following a ruling of the Sixth Administrative Court of Appeal on 14 May 2019, Decree No. 295 no longer applies to labour inspections and the SLS may supervise application of labour law only on the basis of the requirements of Act No. 877. According to the KPvU, inspection procedures largely replicate the provisions of Act No. 877. In this respect, the Committee notes the adoption of Ministerial Decree No. 823 of 21 August 2019 on the Procedure for State Control of Compliance with Labour Legislation. The Committee notes with **deep concern** that this Decree also provides for similar restrictions on the powers of labour inspectors, including with regard to the free initiative of labour inspectors to undertake inspections without prior notice (section 8), the maximum duration of labour inspections (section 10), and limits on the inspectors’ ability to impose liability and sanctions if corrective action is taken by the violating entity within a specified time limit (sections 27 and 28).

The Committee recalls that, pursuant to *Article 12(1)(a) and (b) of Convention No. 81 and Article 16(1)(a) and (b) of Convention No. 129*, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. The Committee also recalls that *Article 16 of Convention No. 81 and Article 21 of Convention No. 129* stipulate that workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. In addition, *Article 17 of Convention No. 81 and Article 22 of Convention No. 129* provide that persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it is up to the discretion of the labour inspectors to give warning and advice instead of instituting such proceedings. **The Committee strongly urges the Government to take the necessary measures and adopt appropriate reforms to bring the labour inspection services and the national legislation into conformity with the provisions of Conventions Nos 81 and 129, including 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 recalls that the Government can avail itself of the technical assistance of the ILO in this regard. Lastly, the Committee requests the Government to provide information on draft law No. 1233 of 2 September 2019, which has been approved by the Parliamentary Committee for Social Policy and Veteran’s**



***Rights, and which foresees further limits on labour inspectors' powers related to the application of fines for certain categories of entrepreneurs, as well as a decrease in the level of applicable fines.***

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 2020.]***

## **C095 - Protection of Wages Convention, 1949 (No. 95) / C131 - Minimum Wage Fixing Convention, 1970 (No. 131)**

### **C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)**

#### ***Observation 2019***

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Convention No. 131 (minimum wage) and Conventions Nos 95 and 173 (protection of wages) together. The Committee takes note of the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of Conventions Nos 95 and 131 received on 29 August 2019. It also notes the observation of the International Trade Union Confederation (ITUC) regarding the application of Convention No. 131 received on 1 September 2019.

#### **Legislative developments**

In its last comments, the Committee noted that the draft Labour Code would replace both the Labour Code of 1971 and the Wages Act of 1995, which were the main pieces of legislation giving effect to the ratified Conventions on wages. It requested the Government to provide information on the progress made towards the adoption of the new legislation. ***Noting that the draft Labour Code has not yet been adopted, the Committee requests the Government to provide information on the finalization of the labour law reform.***

#### **Minimum wage**

*Article 3 of Convention No. 131. Criteria for determining the level of the minimum wage.* The Committee notes that in their observations, the ITUC and the KVPU indicate that the minimum wage does not adequately take into account the needs of workers and their families and the cost of living. According to the ITUC, the minimum wage established for 2019 is 12 per cent lower than the subsistence minimum calculated by the Ministry of Social Policy, a benchmark which is not even adequate given that it does not factor in a number of household expenses. The KVPU also states that the Government has not considered the trade unions' suggestion to introduce a system of indexation to ensure that the minimum wage would not lose its value due to the rising inflation during the year. In addition, the KVPU notes that in setting the minimum wage the Government does not consider the overall level of wages in the country, leading to a significant gap between the minimum wage and the average wage. ***The Committee requests the Government to provide its comments in this respect.***

*Article 4(2). Full consultation with employers' and workers' organizations.* The Committee notes that the KVPU indicates that the negotiations on the determination of the minimum wage were not conducted in accordance with the procedure established by the applicable General Agreement. The KVPU also states that neither the Government nor the Parliament formally heard the position of the trade unions and that consequently the minimum wage results from a unilateral decision of the Government. ***The Committee requests the Government to provide its comments in this respect.***

*Article 5. Enforcement.* The Committee notes the KVPU's indication that proper inspections are not carried out due to the moratorium on inspections, and due to the lack of an appropriate number of inspectors. ***The Committee requests the Government to provide its comments in this respect. It also refers to its comments on the application of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).***

#### **Protection of wages**

*Article 12 of Convention No. 95. Wage arrears situation in the country.* In its last comments, the Committee examined the situation of wage arrears in the country, a situation which was particularly prevalent in state-owned coal-mining enterprises. Further to these comments, the Committee notes the information provided by the Government in its report, including regarding the measures taken between 2017 and May 2019 for the payment of wages and wage arrears in state-owned coal-mining enterprises. On the other hand, the Committee notes with **concern** that, according to the information provided by the Government, the amount of wage arrears in the coal-mining industry has been increasing in the first months of 2019. It also notes that the latest observations from the KVPU refer to the continued wage arrears situation. The KVPU also reiterates that, as a result of lasting and systematic wage arrears, social tensions remain in the mining communities. The Committee wishes to emphasize once again that a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and that priority action is therefore needed to put an end to such practices. The Committee recalls once again that the application of *Article 12* in practice comprises three essential elements: (1) efficient control and supervision; (2) appropriate sanctions; and (3) the means to redress the injury caused, including fair compensation for the losses incurred by the delayed payment (see 2003 General Survey on the protection of wages, paragraph 368).

With regard to efficient control and supervision, the Committee notes that the Government indicates that since the beginning of 2019, labour inspectors have carried out inspection visits to determine compliance with labour legislation in eight enterprises in the coal industry. In six of these enterprises, 24 violations of legislation on labour, employment and compulsory state social insurance were discovered, some of which related to the payment of wages. On the other hand, the Committee notes that the KVPU reiterates its previous concerns indicating that the state bodies that control and supervise the application of the relevant legislation do not substantively address the issue of wage arrears. ***The Committee requests the Government to take the necessary measures to ensure efficient control and supervision of the regular payment of wages in the country. It requests the Government to provide information in this regard and refers to its comments on the application of labour inspection Conventions Nos 81 and 129.***

With regard to the imposition of appropriate sanctions, the Committee notes the information provided by the Government, including the indication that in order to systematically resolve the problem of arrears in the payment of wages, the Ministry of Social Policy prepared draft amendments to the existing legislation with the aim of strengthening the protection of workers' rights to the timely payment of wages, including by increasing the amount of compensation to be paid in case of delayed payment of wages. The Committee notes that the KVPU indicates that at times employers pay a portion of the wage arrears to avoid administrative and criminal liability. ***The Committee requests the Government to provide information on any progress made in the adoption of measures to ensure that sanctions in case of non-payment or irregular payment of wages are appropriate.***

With regard to the means to redress the injury, the Committee notes the information provided by the Government, including the indication that according to the Court Fee Act, complaints submitted by physical persons for the recovery of wages are exempted from the payment of court fees. On the other hand, the Committee notes that the KVPU reiterates that workers have difficulties exercising legal remedies due to their poor legal awareness and to the cost of legal representation. The KVPU also states that most of the court decisions on the recovering of wage arrears have not been implemented. ***The Committee requests the Government to provide its comments in this respect. Moreover, noting that the Government indicates that the above-mentioned draft amendments prepared by the Ministry of Social Policy included the establishment of a mechanism to guarantee the payment of wages in arrears in cases of the employer's insolvency, the Committee requests the Government to provide information on the progress made in this regard.***

*The practice of "envelope wages".* In its last comments, the Committee requested the Government to provide information on the measures taken to eliminate the practice according to which workers are forced to agree to the undeclared payment of wages "in envelopes", resulting in the non-payment of the corresponding social contributions. The Committee notes that the Government indicates that the Ministry of Social Policy developed draft amendments to the existing legislation with the aim of counteracting the use of undeclared labour, taking into account successful international practices. ***The Committee requests the Government to provide information on the progress made in this regard.***



*Articles 5 to 8 of Convention No. 173. Workers' claims protected by a privilege.* Further to its previous comments, the Committee notes that section 64 of the 2018 Code of Bankruptcy Procedure provides that workers' claims arising out of the employment relationship shall be protected by a privilege and shall be satisfied on a first priority basis. **Noting that section 2(4) of the Code of Bankruptcy Procedure excludes state-owned enterprises from its application, the Committee requests the Government to clarify how workers' claims are protected in the case of state-owned enterprises.**

## ILO technical assistance

The Committee notes that the country is receiving technical assistance from the Office on the issues raised in the present comments. **The Committee hopes that the Government will be in a position to report concrete progress towards full and effective implementation of the ratified Conventions on wages in its next report.**

**[The Government is asked to reply in full to the present comments in 2021.]**

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

### Observation 2019

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* In its previous comments, the Committee requested the Government to provide information on how measures taken in the framework of the Government's action plan have translated into the creation of productive and lasting employment opportunities, and the impact of such measures taken to increase the participation of specific groups in the labour market, including women, young people, older workers and persons with disabilities. The Government reports that the employment rate in 2017 stood at 56.1 per cent, while the unemployment rate was 9.5 per cent. It indicates that, in light of these figures, the employment situation in Ukraine remains complicated, but there are signs of gradual stabilization. The Government states that 2017 saw a drop in the unemployment rate in ten provinces. In addition, the number of self-employed persons rose by 0.3 per cent and the number of persons in informal employment dropped by 299,100 persons. The Committee notes that, in order to assist jobseekers to find jobs more quickly and to meet employers' recruitment needs, the State Employment Service (SES) introduced new methods of working with clients, which have led to better outcomes in its main areas of work, including improved use of information technology. The Committee notes that the Cabinet of Ministers, through its Directive No. 275-r of 3 April 2017, approved a medium-term Plan of Priority Actions through 2020, whose objectives envisage a system to support a highly-skilled workforce. The SES is undergoing reforms to transform it into a client-oriented agency providing a wide range of services, including training that meets the needs of the economy, and new forms of vocational training for the registered unemployed. The Government indicates that Cabinet of Ministers Directive No. 418-r of 27 May 2017 reoriented the SES toward employment promotion, adding that there has been a shift in focus from paying unemployment benefits to getting unemployed persons back into the work force as rapidly as possible. The Government reports that, in 2017, the SES helped 783,000 persons to secure jobs, including: 350,000 women; 297,000 young people under the age of 35, 13,000 persons with disabilities and 92,000 older workers (those with ten or fewer years until retirement). The Government adds that of those who found work in 2017, 45 per cent found a job before they had been officially registered as unemployed. **The Committee requests the Government to continue to provide detailed, updated information, including statistical data disaggregated by sex, age and region, regarding the employment situation in the country. It further requests the Government to provide updated information concerning the activities of the SES, including with respect to the manner in which its placement activities have led to lasting employment opportunities. It also requests the Government to provide information on the manner in which those persons who found a job prior to registering with the SES as unemployed were placed in employment, whether this was through the SES or other channels. The Committee reiterates its request that the Government provide copies of legislation and regulations adopted or envisaged relevant to active labour market measures, including with respect to the nature and extent of State Employment Service Reforms. The Government is also requested to provide information on the impact of measures taken or envisaged to increase the participation of specific groups, including women, older workers, young persons, persons with disabilities, and the long-term unemployed.**

*Coordination of education and training programmes with employment policy.* The Committee observes that the Government's priority action plan emphasizes the need to modernize vocational guidance and training to increase the skills of the labour force and meet employers' needs, as well as to anticipate future labour market needs. In this respect, the Government reports that work began in 2017 to develop occupational standards to improve qualifications and enhance educational standards, bring training into line with employers' needs and validate informal education. The Committee also notes the information provided by the Government regarding measures taken to enhance the system of vocational training, retraining and skills development for unemployed persons to increase their employability. In addition, amendments were introduced in September 2017 to the Conceptual Framework of the State Vocational Guidance System to improve training for young persons. The Committee further notes the amendments to the Employment Act and the Arrangement for the Distribution of Vouchers to Support Employability, which expanded the categories of persons entitled to receive training vouchers. **The Committee requests the Government to provide information concerning initiatives taken in collaboration with the social partners to facilitate skills training and increase employability, as well as information on the impact of such initiatives in assisting unemployed persons to enter and remain in the labour market. The Committee further requests the Government to supply information on the manner in which forecasting of labour market needs is carried out on a regular basis and the measures taken to improve the coordination of anticipated labour market needs with education and skills development with the aim of avoiding skills mismatches. It also reiterates its request that the Government provide a copy of the legislation on "Professional Education" once it is adopted.**

*Youth employment.* In its previous comments, the Committee requested the Government to provide information about the impact and sustainability of the measures taken to tackle youth unemployment and promote the long-term integration of young persons in the labour market. The Committee also requested the Government to provide information regarding the measures taken or envisaged to prevent the use of discriminatory restrictions in job vacancy announcements, including restrictions on the basis of age. With respect to the employment situation of young persons, the Government reports that a total of 431,000 young persons were registered as unemployed in 2017 – 87,000 less than in 2016. It adds that, in 2018, this number fell to 122,000. The Government further reports that the SES placed 297,000 young persons in employment in 2017, noting that half of them were placed in employment before being officially registered as unemployed. Moreover, vocational guidance services were provided to 410,000 unemployed young persons, as well as to over one million persons studying at various institutions. The Committee notes the Government's indication that, to match the skills of jobseekers as closely as possible to the needs of employers, and at the request of employers, the SES organized vocational training for 53,000 people under the age of 35. In this way, 297,000 young people were helped by the SES to find a job and 61,000 young people started to work in community or in temporary works. However, the Committee notes that the Government does not provide any information about any possible measures taken or envisaged concerning discriminatory restrictions in job vacancy announcements. **The Committee requests the Government to continue to provide detailed information, including statistical data disaggregated by sex and age, concerning the employment situation of young persons in Ukraine. The Committee reiterates its request that the Government provide detailed information on measures taken to prevent and prohibit the use of discriminatory restrictions, including age restrictions, in job vacancy announcements, as well as on the manner in which such measures are implemented.**

*ILO technical assistance.* The Committee notes the technical assistance provided by the Office with regard to the formulation of legislation on employment promotion as well as to the introduction of new definitions of jobseeker and unemployed in Ukraine's labour law. **The Committee requests the Government to provide information on progress made in this regard, and to communicate a copy of the legislation when adopted.**

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

### Observation 2019

*Article 9 of the Convention. Cost-sharing for pharmaceutical products.* In its previous comments, the Committee requested the Government to indicate the measures taken to reduce cost sharing for pharmaceutical products outside the hospital for victims of occupational accidents. The Committee notes, as stated by the Government in its report, that prescription charges and the costs of dental treatment outside the hospital continue to be borne by recipients of industrial injuries benefits on the same basis as they are borne by people receiving other state benefits. The Committee further notes the Government's indication that assistance may be available, for example, in case of receipt of qualifying income-related benefits or in case of specified conditions related to age or health. As far as Northern Ireland is concerned, the Committee takes due note that all Health Service prescriptions dispensed outside the hospital are free of charge for everyone. **Recalling that, in accordance with Article 9 of the Convention, the cost of medical aid, surgical and pharmaceutical aid shall be provided free of charge, the Committee requests the Government to take the necessary measures to ensure the full application of Article 9 of the Convention with respect to the provision of pharmaceutical products outside the hospital to all persons protected in case of occupational injury.**

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body has decided that member States for which Workmen's Compensation (Accidents) Convention, 1925 (No. 17) is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or to accept Part VI of Social Security (Minimum Standards) Convention, 1952 (No. 102) (see GB.328/LILS/2/1). **The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM tripartite working group and to consider ratifying Convention No 121 or accepting Part VI of Convention No. 102 as the most up-to-date instruments in this subject area.**

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

### Observation 2019

The Committee notes the observations of the Trades Union Congress (TUC), received on 30 August 2019.

*Articles 6, 10 and 11 of the Convention. Number and conditions of service of labour inspectors.* The Committee notes that the observations of the TUC refer to substantial budgetary cuts within the last ten years leading to an insufficient number of labour inspectors (including technical experts) to effectively enforce compliance with the labour legislation (for example, in the areas of asbestos and fire safety) and that this number is further declining. The TUC adds that the Health and Safety Executive (HSE) faces important retention and recruitment issues, in view of limitations on career progression and unattractive wages in relation to similar positions in the private and public sectors. The Committee notes with **concern** from the statistical information provided by the Government in its report, in response to the Committee's request, that the number of labour inspectors decreased from 1,432 to 990 between 2011–12 and 2018–19. In this respect, it notes the indication of the TUC that the actual number of labour inspectors is significantly lower, as managers and technical experts are included in the Government's figures. **Recalling that the number of labour inspectors shall be sufficient to secure the effective discharge of their duties, the Committee requests the Government to take the necessary measures in this regard, and to provide information on the measures it is taking with respect to recruitment and retention. It requests the Government to continue to provide statistics on the number of labour inspectors, and to provide its comments with respect to the indication of the TUC on issues arising from the current classification of technical experts and managers as inspectors.**

*Articles 10, 15(c) and 16. Resources of the labour inspection system and inspection visits. 1. Coverage of workplaces by labour inspection.* The Committee previously noted the reform of the labour inspection strategy, including: (i) targeting inspections in higher-risk sectors; (ii) reducing inspections in areas of concern but where inspections are unlikely to be effective; and (iii) discontinuing inspections in low-risk sectors, except where a workplace was underperforming concerning occupational safety and health (OSH). It also noted that it was planned to reduce the number of inspections in non-major hazard industries, from 2010–11 onwards, by one third every year. In this respect, the Committee considered that while the planning and targeting of inspection activities may be an appropriate method to achieve improved coverage of workplaces by labour inspection, it was important to ensure that often-vulnerable categories of workers (such as workers in small enterprises and workers in agricultural areas) are not excluded from protection due to the fact that they are employed in workplaces or sectors that are not necessarily identified as being high risk, or in sectors where labour inspection is considered too resource-intensive to undertake.

The Committee notes from the statistical information provided by the Government, in response to its request, that the number of OSH inspections undertaken between 2011–12 and 2018–19 remained relatively stable with around 20,000 visits a year and only slightly decreased by about 2,000. However, the Committee also notes the Government's indication, in response to a request for disaggregated information on the workplaces concerned by these visits, that inspection data is only available in a published format as a general total. The Committee notes the Government's indications, in response to the Committee's request on the means used by the labour inspectorate to detect underperformance in the area of OSH of workplaces that are not expected to be subject to inspections, that randomly selected visits (benchmarking visits) are undertaken. The Government indicates that the full results of the intelligence-led system for targeting workplaces and the determination of inspection targets through the "Going to the Right Places Programme" and the "Find-it targeting tool" are not yet available, but indicates that the process is generally effective in identifying sites, although it is important to continue to monitor sectors outside higher risks groups already identified. The Committee also notes that the TUC indicates that because regional variations and other anomalies are not taken into account in the intelligence-led system, some potentially dangerous workplaces are going entirely without inspection. **The Committee requests the Government to continue to provide information on the number of labour inspections undertaken, and to provide its comments as regards the observations made by the TUC. The Committee also once again requests the Government to ensure that specific and detailed information on the number of inspections undertaken by the HSE is available, disaggregated by the number of workplaces covered by inspection in small, medium-sized and large enterprises and the sectors concerned. It also requests the Government to provide the full results of the assessment of the intelligence-led system for targeting of workplaces including the "Going to the Right Places Programme" and the "Find-it targeting tool" once they are available.**

*2. Strategies for compliance in lower-risk small and medium-sized workplaces (SMEs).* The Committee previously noted that in the context of the Government's strategy to focus inspections on particular sectors, assistance is provided to employers in lower-risk SMEs to meet their legal obligations in the area of OSH (through the establishment of a register of accredited OSH consultants, guidance and online risk assessment tools, free access to advice on OSH and awareness-raising activities). The Committee notes the Government's indication, in reply to the Committee's request, that self-assessments in workplaces are not legally required, and that their use is therefore not monitored by the HSE inspectorate. The Committee also notes from the 2018–19 report of the HSE that long-standing problems such as helping smaller businesses to manage risks proportionately were one of the targets of the period covered by the report. **The Committee requests the Government to provide an assessment of the impact of the assistance provided to employers in lower-risk SMEs on compliance with the legal provisions relating to conditions of work and the protection of workers.**

*Articles 6, 11 and 15(a). Financial resources of the labour inspection services.* In its previous comments, the Committee noted that it was envisaged to further extend the Fee for Intervention (FFI) cost recovery scheme, which, since 2012, obliges employers in breach of OSH requirements to cover the costs of the HSE in identifying, investigating, rectifying and/or enforcing relevant violations. The Committee noted the Government's reference to generally positive findings as

regards the impact of the FFI scheme on the improvement of OSH management. However, it also noted some concerns in an earlier HSE report as regards the dependence of the HSE on the income from that scheme, the potential damage to the reputation of the HSE concerning impartiality and independence, and questions on whether the HSE has an income target for the FFI scheme.

The Committee notes the Government's indication, in response to the Committee's request, that about 7.5 per cent of the budget of the HSE is forecast to be recovered through the FFI, that the hourly rate for the FFI has increased from April 2019 and that the HSE is considering options to further increase the scope of fees and charges to recover more of the cost of its regulatory activities. In this respect, the Committee also notes with **concern** from the 2018–19 report of the HSE that managing the financial resources effectively remains a challenge and that the uncertain nature of the income that is derived from the FFI creates challenges for budgeting. As regards the potential damage to the reputation of the HSE, the Committee notes the Government's indication that a query and dispute process was introduced for the FFI scheme. The Committee also notes the indications of the TUC that, while the Government attempts to introduce money-raising elements to inspection, to partially reduce the impact of big reductions in public funding, they come with a risk of unintended consequences, such as employer reluctance to proactively seek advice and technical information from the HSE for fear of being found in material breach. The Committee recalls that, in conformity with *Article 17*, it is essential for member States to allocate the necessary material resources so that labour inspectors can carry out their duties effectively. **The Committee emphasizes that labour inspection is a vital public function, at the core of promoting and enforcing decent working conditions. It urges the Government to take the necessary measures to ensure that sufficient budgetary resources are allocated for labour inspection, and to provide information on the concrete steps taken to address the challenges identified by the HSE with respect to budgeting. In this respect, the Committee requests the Government to continue to provide information on the budgetary situation of the HSE, and the proportion of its budget raised from the FFI scheme. Lastly, the Committee requests the Government to provide its comments with respect to the TUC observations on the risk of unintended consequences.**

*Articles 17 and 18. Prompt legal proceedings for violations of the legal provisions enforceable by labour inspectors.* The Committee notes the Government's reference, in response to the Committee's request for information on the number of infringements detected and measures taken as a result in each year since the reform, to the HSE's website as regards prosecutions and enforcement action. The Committee notes from the 2018–19 report of the HSE that, between 2015–16 and 2018–19, there has been a significant fall in the number of cases brought by the HSE in which a verdict or conviction has been reached from 672 convictions (out of 711 cases with a verdict) in 2015–16 to 361 convictions (out of 396 cases with a verdict) in 2018–19. The report states that the HSE is currently examining the reasons for this decrease, including the possible impact of having a larger number than usual of inspectors in training. In this respect, the Committee also notes the reference of the TUC to a substantial decline in the enforcement activities of the labour inspection services mainly due to a decline in the staff number and inspections. **The Committee requests the Government to take the necessary measures to ensure that adequate penalties for violations of the legal provisions enforceable by labour inspectors are effectively enforced, in conformity with Article 18 of the Convention. In this respect, it requests the Government to provide information on the outcome of the assessment regarding the reasons for the above-mentioned decrease. It also requests the Government to provide detailed information on the number of infringements detected and the measures taken as a result, disaggregated by workplaces covered in small, medium-sized and large enterprises and the sectors concerned. [The Government is asked to reply in full to the present comments in 2020.]**

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

### Observation 2019

The Committee notes with **regret** that the Government, in its report, has not replied to the issues raised in its previous observation.

*Articles 1 to 3 of the Convention. Northern Ireland.* The Committee notes, once again, that the Equality Act 2010 is not applicable in Northern Ireland and that teachers are excluded from the protection against discrimination on the grounds of religious belief. It notes with **interest** that the Racial Equality Strategy 2015–25 for Northern Ireland has been adopted. This document acknowledges that “a significant gap has opened up between the protections offered in Great Britain and [Northern Ireland]”. Among its proposed actions is the review of the Race Relations (Northern Ireland) Order 1997, and other relevant aspects of legislation. It also raises the question of whether ethnic monitoring should be introduced. The Committee notes that the Strategy commits, inter alia, to: giving stronger protection against racial harassment, including of employees by clients or customers; removing or modifying certain exceptions, including those relating to immigration and the employment of foreign nationals in the civil, diplomatic, armed or security and intelligence services and by certain public bodies; expanding the scope of positive action which employers and service providers can lawfully take in order to promote racial equality; increasing protection under the race equality legislation for individuals against victimization; introducing protection against multiple discrimination; strengthening tribunal powers to ensure effective remedies for complainants bringing racial discrimination complaints; and reviewing the Fair Employment and Treatment (NI) Order 1998, so as to require registered employers to collect monitoring information as regards nationality and ethnic origin of their employees and job applicants. **The Committee once again asks the Government to take steps to abolish the exclusion of teachers from protection against discrimination on the ground of religious belief and to provide information on any development relating thereto. It also asks the Government to provide detailed information on the implementation of the Racial Equality Strategy 2015–25 for Northern Ireland.**

*Enforcement.* The Committee notes with **interest** that the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013, which introduced a requirement to pay a fee to initiate proceedings in employment tribunals, has now been revoked and that the number of discrimination claims has begun to increase in consequence. It also notes again that section 66 of the Enterprise and Regulatory Reform Act 2013 (ERRA) has repealed section 138 of the Equality Act 2010, which allowed a potential victim of discrimination to submit a list of questions to the potential respondent in order to overcome the difficulties in identifying whether discrimination has occurred. In this regard, the Committee recalls, once again, that the burden of proof can be a significant obstacle to justice, particularly as much of the information needed in cases related to equality and non-discrimination is in the hands of the employer. The Committee further notes that section 2 of the Deregulation Act 2015 amended section 124 of the Equality Act 2010, removing the employment tribunals' power to make wider recommendations. **The Committee asks the Government, once again, to provide information on the administrative and judicial decisions concerning the implementation of the Convention, as well as statistical information on trends in the number of discrimination claims before employment tribunals and their rates of success. It further asks the Government to provide information on the impact of the removal of the employment tribunals' power to make wider recommendations.**

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



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

## Observation 2019

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Tobacco and Allied Workers' Associations (IUF) received on 30 August 2019.

*Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production).* In its previous comments, the Committee noted the allegations made by the IUF that the Government of Uzbekistan continued to impose a state system of forced labour for the economic purpose of producing cotton. It also noted the International Trade Union Confederation's (ITUC) observations that there were a number of cases of involuntary engagement of workers as well as cases of extortion for replacement payments by local authorities which needed to be investigated and prosecuted. In this regard, the Committee noted the information provided by the Council of the Federation of Trade Unions of Uzbekistan (CFTUU) on the various measures taken within the framework of cooperation between Uzbekistan, the ILO and the World Bank for the implementation of ILO Conventions on child and forced labour in 2016, including training courses and seminars on international labour standards and their implementation for employees of ministries, departments, NGOs and farmers; awareness-raising campaigns against child and forced labour; and monitoring and implementation of the Feedback Mechanism (FBM). Moreover, at a round table discussion held in Tashkent and entitled "Status and Prospects for Cooperation between Uzbekistan and the ILO" all the participants, including representatives of the ILO, IOE, ITUC, World Bank, UNDP, UNICEF and diplomatic representatives expressed their commitment and willingness to cooperate closely with Uzbekistan.

The Committee further noted the results of the ILO quantitative survey on employment practices in the agricultural sector conducted by the research centre (*Ekspekt fikri*) which indicated a decrease in the number of cotton pickers from 3.2 million in 2014 to 2.8 million in 2015; an increase in the number of voluntary participants in the 2015 cotton harvest; and a decrease in the number of medical employees, educational workers and students among the cotton pickers. The Committee finally noted from the report of the ILO, Third Party Monitoring and Assessment of Measures to Reduce the Risk of Child Labour and Forced Labour during the 2016 cotton harvest (TPM report) that since the 2015 harvest, the Government had made further commitments against child and forced labour, especially within the Action Plan for Improving Labour Conditions, Employment and Social Protection of Workers in the Agricultural Sector 2016–18. Several training workshops to build the capacity of officials, including *Hokims* (regional governors), were conducted before the harvest with ministries, organizations and entities involved at all levels. Public awareness campaigns during the harvest reached remote villages, and messages on child and forced labour, on labour rights, and on the FBM hotline were distributed nationwide. Referring to the preliminary results of the ILO quantitative survey, the TPM report indicated that of the 2.8 million cotton pickers in 2015, a significant number, about two-thirds, were recruited voluntarily and that those "at risk" of involuntary work were mainly from the education sector, medical staff and students. The TPM report indicated that the monitoring teams, led by ILO experts, who visited 50 medical care facilities found that they were functioning normally during the harvest and that the staff attendance were usually monitored. The TPM report further indicated that while the unacceptability of child labour were recognized by all segments of society, awareness on risks of forced labour needed to be improved. The TPM report concluded that while important measures had been introduced for the voluntary recruitment of cotton pickers, they were not robust enough to decisively change the recruitment practices. Referring to the recommendations indicated in the TPM report to reduce the risk of forced labour in the cotton harvest, the Committee strongly encouraged the Government to continue to take effective and time-bound measures to strengthen safeguards against the use of forced labour in the cotton harvest, including through strengthening a functioning labour relations system for cotton pickers, developing a high-quality training strategy for all actors involved in the cotton harvest and continuing to raise awareness among all segments of society about the risks of forced labour in the cotton harvest.

The Committee notes the observations made by the IUF that the mobilization and use of labour for economic development in agriculture and to an extent in other sectors, remains a massive, systematic, ubiquitous and truly nationwide practice involving military personnel and servicemen, doctors, teachers, employees of state enterprises and other workers.

The Committee notes the Government's information in its report on the various legislative measures taken, including amendments and additions to the existing laws as well as adoption of new laws to improve the working and employment conditions in agriculture and to bring them into compliance with the fundamental standards and norms. In this regard, the Committee notes the Government's reference to the following measures taken:

- Law No. ZRU-558 of August 2019 on insertion of amendments and additions to several pieces of legislation, including section 51 of the Administrative Liability Code, thereby stiffening the penalties for coercion to work and the engagement of children in forced labour;
- Order No. 197-ICH of the Ministry of Employment and Labour Relations (MELR) of 13 August 2019 on increasing the number of city and district state legal labour inspectors of the State Labour Inspectorate;
- Resolution No. 349 of the Cabinet of Ministers of 10 May 2018 on additional measures to eliminate forced labour through mandating the heads of state and economic administrative bodies at all levels to respond effectively to and stop the exaction of all types of forced labour from individuals, in particular, educational and healthcare workers, pupils, and employees of other public sector organizations, and to impose strict disciplinary measures against officials who directly or indirectly commit or allow the exaction of forced labour;
- Presidential Edict No. UP-5563 of 29 October 2018 on increasing the responsibility of heads of state bodies at all levels for prohibiting and eliminating forced labour in all its forms and manifestations;
- Resolution No. 799 of the Cabinet of Ministers of October 2017 on the organization of the operations of the Community Work Fund of the MELR with the aim of prohibiting forced labour by engaging individuals in paid community work.

The Government also indicates that notices regarding the prohibition of child labour and forced labour have been displayed in all localities, in healthcare and educational institutions and state organizations. Wide-scale campaigns on penalties for breaching the prohibition of child labour and forced labour have been conducted. With the assistance of the ILO, in 2018, 400 banners and 100,000 flyers on the prohibition of forced labour were distributed and placed in visible locations across the country. A short film on the FBM on forced labour was broadcasted on television. Tangible organizational and financial steps have been taken with a view to recruiting workers voluntarily for the cotton harvest. The Committee further notes the Government's information regarding the reports on forced labour received by the FBM through a messaging service Telegram and a telephone hotline. According to this database, in 2016 and 2017, no more than 15 reports were received, in 2018, 2,135 reports were received. The state labour inspectors examined all the reports and in 284 cases concerning the use of forced labour, administrative penalties were imposed on persons forcing employees to pick cotton, including heads of the tax inspectorates and heads of the region, local council and local administrations (*hokims*). Orders were sent to 250 organizations to remedy breaches of the labour law and occupational safety and health; 50 representations were sent to heads of organizations; and a warning was sent to the Ministry of Defence. Disciplinary proceedings were brought against over 100 directors of comprehensive socio-economic development zones, 30 of them were dismissed from their posts, and 11 *hokims* were fined. Moreover, the Committee notes from the Government's report that the ILO Decent Work Country Programme (DWCP) has been extended to 2020.

The Committee notes with **interest** from the report of the ILO, Third Party Monitoring of child labour and forced labour during the 2018 cotton harvest (TPM report of 2018) that Uzbekistan has demonstrated major progress in the eradication of forced labour in the cotton harvest of 2018. Forced labour was reduced by 48 per cent compared to 2017. According to this report, there is a continued strong political commitment and clear communications from the Government of Uzbekistan to eradicate forced labour. The Committee also notes the following positive developments and results achieved in 2018 as reflected in the TPM



report:

- Systematic forced labour (refers to a situation of forced labour imposed by the Government in a methodical and organized manner) was not exacted by the Government during the 2018 cotton harvest;
- The prohibition on recruiting students, teachers, nurses and doctors was systematically implemented and generally observed at the local level;
- Wages were increased by up to 85 per cent compared to the previous harvest and cotton pickers were paid on time and in full;
- Media started reporting actively on forced labour. Journalists were encouraged by the Government to cover forced labour issues. Local independent human rights activists were free to conduct their monitoring activities;
- Labour inspectorate was strengthened with 200 inspectors receiving training by the ILO on forced labour investigations and were deployed throughout the country to investigate alleged forced labour cases; and
- Over 2,000 cases of forced labour were investigated and 206 *hokims*, officials and managers were sanctioned for forced labour violations, leading to fines, demotions and dismissals.

The Committee takes due note of the measures taken by the Government and their impact on reducing the number of cases of forced labour in cotton farming. It notes however from the TPM report of 2018 that while a vast majority of pickers are not in forced labour, there are still a considerable number of cases of forced labour (6.8 percent or 170,000 people) mainly because the legacy of the centrally planned agriculture and economy (centrally set quotas) is still conducive to the exaction of forced labour. The TPM report states that although reforms announced by the central Government have had an impact, the uneven implementation of national policies, especially at the local level remains a challenge. ***The Committee therefore strongly encourages the Government to continue its efforts, including through its cooperation with the ILO and the social partners, within the framework of the DWCP, to ensure the complete elimination of the use of forced labour in cotton farming through the effective implementation of its policies at the local level. It requests the Government to continue to provide information on the measures taken to this end and the concrete results achieved, with an indication of the sanctions applied.***

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

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

### Observation 2019

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Tobacco and Allied Workers' Associations (IUF) received on 30 August 2019.

*Article 3(a) and (d) of the Convention. Worst forms of child labour. Forced or compulsory labour in cotton production and hazardous work.* In its previous comments, the Committee noted the various legal provisions in Uzbekistan which prohibit both forced labour (including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code) and the engagement of children in watering and picking cotton (pursuant to the list of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age). It also noted the adoption of a Decent Work Country Programme (DWCP) 2014–16, which contains components on the application of the Convention and the Minimum Age Convention, 1973 (No. 138), as well as their corollary indicators to combat child labour. Moreover, a feedback mechanism (FBM) with telephone hotline numbers was established by the Tripartite Coordination Council on Child Labour which received complaints and investigated grievances while providing redress in some cases.

The Committee further noted the various measures taken by the Government to prevent the engagement of children in the cotton harvest, including ministerial instructions, awareness and training events, attendance tracking of pupils and staff as well as measures within the framework of the Action Plan for Improving Labour Conditions, Employment and Social Protection of Workers in the Agricultural Sector 2016–18. Moreover, the ILO Third Party Monitoring (TPM) report on the assessment of measures to reduce the risk of child labour and forced labour during the 2016 harvest, in its conclusions, stated that the national monitoring, the FBM and the Ministry of Public Education were playing an increasing role in preventive measures and had put in place measures to prevent the organized use of children in the cotton harvest. The report further stated that child labour generally did not exist in cotton picking and that the ongoing vigilance, in this regard, seemed to be fully recognized in Uzbekistan. The Committee requested the Government to continue its efforts to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18 years and to continue its measures to monitor the cotton harvest, strengthen record keeping in educational institutions, apply sanctions against persons who engage children in the cotton harvest, and further raise public awareness on this subject.

The Committee notes the observations made by the IUF that serious efforts by the central government have led to a significant reduction in the use of child labour but the quota system (annual cotton production quota imposed on the farmers by the Government) which still exists in the country contributes to the perpetuation of child labour practices in the agricultural sector.

The Committee notes the Government's information in its report on the measures taken, including legislative measures to eliminate the use of child labour in the agricultural sector. Accordingly, the Committee notes the Government's reference to the adoption of Law No. ZRU-558 on insertions of amendments and additions into several pieces of legislation, including section 51 of the Administrative Liability Code thereby stiffening the penalties for engaging a child in forced labour. The penalties include a fine of between 30 and 50 times the minimum monthly remuneration (previously between 5 and 15 times) and a repeat of the offence attracts a fine of between 50 and 100 times the monthly remuneration. The Government also indicates that following the approval of resolution No. 407 of the Cabinet of Ministers of 31 August 2018, consultations were held with representatives of workers' and employers' organisations and an annual plan of national measures to monitor compliance with the fundamental principles and rights at work, using ILO methodology and tools during the cotton harvest has been approved. The Committee further notes the Government's information that during the 2018 monitoring, the ILO assisted the Ministry of Employment and Labour Relations in training over 300 labour inspectors in identifying child and forced labour and on methods of carrying out such inspections. In this regard, 11,000 interviews were carried out without prior notification and over 7,000 people were trained in fair recruitment for the cotton-harvesting season. Moreover, 500 employees of the prosecution service, labour inspectors and trade union officials underwent training in methods to verify cases of child and forced labour. The Committee further notes the Government's information that the DWCP has been extended up to 2020 and a road map for its implementation and to widen cooperation with the ILO has been approved on 1 August 2019. The Government further referring to the Report of the United States Department of Labour, 2019 states that Uzbek cotton has been removed from the List for Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labour (Executive Order 13226) mainly due to the rarity of cases of child labour in the cotton sector.

The Committee notes from the report published on 1 April 2019 of the ILO Third Party Monitoring of child labour and forced labour during the 2018 cotton harvest (TPM report of 2018) that Uzbekistan demonstrated major progress in the eradication of child labour in the cotton harvest of 2018. It notes with **satisfaction** from the conclusions of the TPM report of 2018 that children are no longer involved in the cotton harvest and the systematic or systemic child labour is no longer a matter of concern. School children and students were not mobilized for cotton picking in the 2018 cotton harvest. ***The Committee requests the Government to continue its efforts to ensure the elimination of compulsory labour and hazardous work of children below the age of 18 years in cotton production, including through awareness raising and monitoring of child labour during the cotton harvest. The Committee requests the***

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***Government to continue providing information in this regard.***

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