



# Governing Body

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## Institutional Section

INS

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## Report of the Committee on Freedom of Association

396th Report of the Committee on Freedom of Association

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## ▶ Introduction

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1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 28 to 30 October and on 4 November 2021, and also in hybrid form, under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Mr Gerardo Corres (Argentina (virtually)), Ms Gloria Gaviria (Colombia), Ms Petra Herzfeld Olsson (Sweden), Mr Akira Isawa (Japan), Ms Anousheh Karvar (France) and Ms Vicki Erenstein Ya Toivo (Namibia); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Ms Renate Hornung-Draus (virtually), Mr Thomas Mackall (virtually, and present for the adoption of the report), Mr Hiroyuki Matsui, Mr Kaiser Moyane (virtually) and Mr Fernando Yllanes (virtually); Workers' group Vice-Chairperson, Ms Amanda Brown, and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Ms Catelene Passchier and Mr Ayuba Wabba. The members of Argentinian, Colombian and South African nationalities were not present during the examination of the cases relating to Argentina (Cases Nos 3331 and 3338), Colombia (Case No. 3133) and South Africa (Case No. 3379).

\* \* \*

3. Currently, there are **143** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **20** cases on the merits, reaching definitive conclusions in **14** cases (**7** definitive reports and **7** reports in which the Committee requests to be kept informed of developments) and interim conclusions in **6** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by government at national level) and the case is effectively closed for the Committee, "interim reports" where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

## Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in **paragraph 7**, and any additional observations in relation to cases in **paragraph 9**, as soon as possible to enable their treatment in the most effective manner. Communications received after **2 February 2022** will not be able to be taken into account when the Committee examines the case at its next session.

## Serious and urgent cases which the Committee draws to the special attention of the Governing Body

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2318 (Cambodia), 2508 (Islamic Republic of Iran), 2609 (Guatemala) and 3185 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein. The Committee recalls in this regard that, in accordance with paragraph 54 of its Procedures, it considers as serious and urgent cases those involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.

## Cases examined by the Committee in the absence of a government reply

6. The Committee deeply regrets that it was obliged to examine the following case without a response from the Government: 3386 (Kyrgyzstan).

## Urgent appeals: Delays in replies

7. As regards Cases Nos 3249 (Haiti), 3275 (Madagascar), 3337 (Jordan), 3393 (Bahamas), 3396 (Kenya) and 3398 (Netherlands), the Committee observes that despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the Governments. The Committee draws the attention of the Governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases at its next meeting if their observations or information have not been received in due time. The Committee accordingly requests these Governments to transmit or complete their observations or information as a matter of urgency.

## Observations requested from governments

8. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2254 (Bolivarian Republic of Venezuela), 3018 (Pakistan), 3067 (Democratic Republic of the Congo), 3076 (Maldives), 3184 (China), 3269 (Afghanistan), 3406 (China – Hong Kong Special Administrative Region), and 3408 (Luxembourg). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

## Partial information received from governments

9. In Cases Nos 2265 and 3023 (Switzerland), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 and 3232 (Argentina), 3242 (Paraguay), 3277 (Bolivarian Republic of Venezuela), 3282 (Colombia), 3300 (Paraguay), 3325 (Argentina), 3335 (Dominican Republic), 3366 and 3368 (Honduras), 3370 (Pakistan), 3376 (Sudan), 3383 and 3384 (Honduras) and 3403 (Guinea), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.



## Observations received from governments

10. As regards Cases Nos 2177 and 2183 (Japan), 2761 (Colombia), 2923 (El Salvador), 3027 (Colombia), 3042 and 3062 (Guatemala), 3074 (Colombia), 3148 (Ecuador), 3149 and 3157 (Colombia), 3179 (Guatemala), 3199 (Peru), 3203 (Bangladesh), 3207 (Mexico), 3208, 3213, 3217 and 3218 (Colombia), 3219 (Brazil), 3221 (Guatemala), 3223 (Colombia), 3225 (Argentina), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3251 and 3252 (Guatemala), 3258 (El Salvador), 3260 (Colombia), 3263 (Bangladesh), 3265 and 3267 (Peru), 3271 (Cuba), 3280, 3281 and 3295 (Colombia), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 (Argentina), 3315 (Argentina), 3319 (Panama), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3326 (Guatemala), 3329, 3333 and 3336 (Colombia), 3339 (Zimbabwe), 3342 (Peru), 3349 (El Salvador), 3351 (Paraguay), 3352 (Costa Rica), 3355 (Brazil), 3356 and 3358 (Argentina), 3359 (Peru), 3360 (Argentina), 3363 (Guatemala), 3364 (Dominican Republic), 3365 (Costa Rica), 3369 (India), 3373 (Peru), 3375, 3377 and 3382 (Panama), 3385 (Bolivarian Republic of Venezuela), 3387 (Greece), 3388 (Albania), 3389 (Argentina), 3390 (Ukraine), 3391 (South Africa), 3392 (Peru), 3395 (El Salvador), 3397 (Colombia), 3400 (Honduras), 3401 (Malaysia), 3402 (Peru), 3404 (Serbia), 3405 (Myanmar), 3407 (Uruguay), 3409 (Malaysia) and 3410 (Turkey) the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

## New cases

11. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: 3411 (India), 3412 (Sri Lanka) and 3413 (Plurinational State of Bolivia) since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

## Admissibility of complaints

12. In its March 2021 report (GB.341/INS/12/1), the Committee decided to set out a certain number of criteria to assist in filtering out complaints for which it considered it would not be in a position to provide pertinent recommendations under its mandate (including the time elapsed since the alleged matters occurred; the treatment and follow-up of the matter at national level (i.e. ongoing consideration by independent bodies); insufficient evidence or support of the freedom of association violation alleged and its consideration at international level or absence of a link to freedom of association or collective bargaining). The Committee has decided that it was not in a position to provide pertinent recommendations under its mandate with respect to four complaints received between March and October 2021 and therefore decided not to examine them.

## Article 24 representations

13. The Committee has received certain information from the following Government with respect to the article 24 representation that was referred to it: Costa Rica (3241) and intends to examine it as swiftly as possible. The article 24 representations referred to the CFA concerning the Governments of Brazil (3264) and France (3270) are being finalized by the corresponding tripartite committees. The Committee has also taken note of the referral of the article 24 representations concerning Argentina, France and Poland and is awaiting the Governments' full replies.

## Article 26 complaint

14. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry. In light of the time that has elapsed since its previous examination of this case, the Committee requests the Government to send its observations so that it may examine the follow-up measures taken with respect to the recommendations of the Commission of Inquiry at its next meeting.

## Transmission of cases to the Committee of Experts

15. The Committee draws the legislative aspects of Cases Nos 3386 (Kyrgyzstan) and 3313 (Russian Federation) as a result of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

## ▶ Cases in follow-up

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16. The Committee examined **5** cases in paragraphs **17** to **47** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **all 5** cases: 2870 (Argentina), 2960, 3087 and 3090 (Colombia) and 2916 Nicaragua).

## Case No. 2870 (Argentina)

17. The Committee last examined this case, submitted in June 2011, at its June 2015 meeting [see 375th Report, paras 15 to 21]. The Committee recalls that this case relates to obstacles and a delay of several years in the processing of an application for trade union status by the Federation of Energy Workers of the Argentine Republic (FETERA) filed with the labour administrative authority. In the last examination of the case, the Committee strongly urged the Government to take the necessary measures without delay so that: (a) the trade union status for which FETERA has been applying for over 14 years is awarded; and (b) in consultation with the social partners, all the provisions of the Act on Trade Union Associations (No. 23551), which do not conform to the principles of freedom of association are amended as recommended by the ILO supervisory bodies. The Committee requested the Government to keep it informed in this regard.
18. In their communications of 23 March 2017 and 29 May 2018, the complainant organizations, the Confederation of Workers of Argentina and FETERA, indicate that: (i) without prejudice to the Committee's recommendations and the statements made by the Committee of Experts on the Application of Conventions and Recommendations concerning the granting of trade union status to FETERA, more than 16 years have passed without the Ministry of Labour taking a decision in that regard; (ii) since the Ministry of Labour failed to act, in November 2015, an appeal was lodged with the National Labour Appeals Chamber (Case No. 66541/15); (iii) on 27 June 2017, the Chamber granted the appeal and ordered the Ministry of Labour to award trade union status to FETERA; (iv) on 9 April 2018, the Chamber rejected the extraordinary appeals lodged by the Ministry of Labour and the Federation of Electricity and Energy Workers (which had acted as a third party); and (v) on 19 April 2018, the Chamber submitted the decision to the National Directorate of Trade Union Associations.

19. In a communication of 30 September 2021, FETERA indicates that, more than 21 years since the proceedings were instituted and in accordance with the resolution of the Labour Appeals Chamber, on 20 September 2021, Ministry of Labour resolution No. 566/2021 was published in the *Official Gazette*, providing for the granting of trade union status to FETERA. FETERA emphasizes the enormous and important work done by the ILO supervisory bodies in an attempt to guarantee the right to freedom of association and the effective operation of the system so that, finally, FETERA achieves recognition through greater representation within the framework of Argentinian laws.
20. In its communication of 24 May 2017, the Government indicates that the proceedings that were in progress before the National Labour Appeals Chamber (Case No. 66541/15) had not been finalized. The Government attached a summary of the proceedings that had taken place within that case.
21. In its communication of 21 September 2021, the Government states that on 20 September 2021, the Ministry of Labour, Employment and Social Security granted trade union status to FETERA.
22. *The Committee recalls that FETERA requested trade union status in 2000. It also recalls that it first examined this case in 2012 and, on that occasion, recalled that delays in a registration procedure represent a serious obstacle to organizations being established and are equivalent to refusing workers the right to set up organizations without prior authorization.*
23. *The Committee notes that, according to the statements made by the complainant organizations, on 27 June 2017, the National Labour Appeals Chamber ordered the Ministry of Labour to grant trade union status to FETERA. It also notes that, according to both FETERA and the Government, on 20 September 2021, the Ministry of Labour granted trade union status to FETERA. The Committee notes this information with satisfaction and expresses the firm hope that this precedent will contribute significantly to improving the functioning of the procedures for granting trade union status.*
24. *The Committee brings the legislative aspects of this case, i.e. those relating to the Act on Trade Union Associations, No. 23.551, to the attention of the Committee of Experts on the Application of Conventions and Recommendations, and considers that the case is closed and will not continue with its examination.*

### Case No. 2960 (Colombia)

25. The Committee last examined this case at its March 2015 meeting [see 374th report, paras 258 to 268] concerning allegations of acts of anti-union harassment and refusal to negotiate a list of demands within an enterprise in the solidarity economy sector. On that occasion, the Committee: (a) requested the complainant organizations to provide details in relation to the allegations of anti-union harassment in order to continue with the examination of these allegations, and (b) urged the Government to take the necessary measures to expedite the resolution of complaints of anti-union discrimination and workplace harassment presented to the Ministry of Labour and the National Office of the Attorney-General and to keep it informed of the outcome.
26. The Committee notes that it has received additional information from the complainant organization in a communication of 13 June 2017. The Committee observes that, in said communication, the complainant organization denounces: (i) the process of liquidating the enterprise, which is alleged to have profoundly affected its workers' labour rights; (ii) the Ministry of Labour's failure to take into consideration the administrative disputes presented by the union organizations in relation to the liquidation, and (iii) the impact of the liquidation on the enjoyment of freedom of association by the enterprise group

workers. In this respect, the Committee recalls that it is only able to give an opinion on allegations concerning programmes and processes of restructuring or economic rationalization, whether or not they entail staff reductions or the transfer of companies or services from the public to the private sector, if they give rise to acts of discrimination or anti-union interference [see **Compilation of decisions of the Committee on Freedom of Association, sixth edition**, 2018, para. 42]. Noting that the complainant organization's communication does not contain reference to specific instances of anti-union discrimination or interference, the Committee will not continue with the examination of this new allegation.

27. In relation to its recommendation (a), the Committee notes that it has not received the additional information requested from the complainant organizations concerning the allegations of anti-union harassment.
28. As regards its recommendation (b), concerning how to expedite the resolution of complaints of anti-union discrimination and workplace harassment filed and the outcome thereof, the Committee notes the Government's communications of 27 October 2015, 2 August 2018 and 1 February 2019. The Government states that the Bogotá Regional Department of the Ministry of Labour carried out the administrative investigation following the anti-union harassment complaint filed by the CGT in support of UNITRACOOP and specifically indicates that : (i) in a resolution of 26 January 2016, the Coordinator of the Dispute Settlement and Conciliation Group of the Bogotá Regional Department decided to absolve the enterprise of responsibility for acts infringing the right to freedom of association; (ii) on 16 March 2017, the Regional Department settled the appeal lodged by UNITRACOOP, confirming the 2016 decision to absolve the enterprise; and (iii) on 22 June 2018, the Coordinator of the Dispute Settlement and Conciliation Group of the Bogotá Regional Department observed that the 2016 absolution decision had remained legally binding and had been enforced, and closed the case. *The Committee duly notes this information relating to the labour administration absolving the enterprise. While it notes that it did not receive information on the treatment given to the complaint filed with the National Office of the Attorney-General, the Committee observes that nor has it received the requested details from the complainant organization concerning its allegations of anti-union harassment. Based on the aforementioned elements, the Committee considers that the case is closed and will not continue with its examination.*

## Case No. 3087 (Colombia)

29. The Committee last examined this case, concerning the alleged refusal by the company Bancolombia SA (the company) to bargain collectively with the Union of Workers of Financial Entities (SINTRAENFI) and also alleged acts of anti-union persecution against that organization, at its meeting in October–November 2015 [see 376th Report, paragraphs 301–320]. On that occasion, the Committee requested the Government to: (a) keep it informed of the decision taken on the appeal for annulment lodged by the company against the arbitration ruling issued [in 2014] at the initiative of SINTRAENFI, as well as of the outcome of the complaint brought [in 2014] by SINTRAENFI, before the labour inspectorate for alleged breach of the rules of collective labour law (recommendation (a)), and, (b) send full observations concerning the legal cases brought in response to the creation of three subsections of SINTRAENFI; the Committee also requests the complainant organizations and the company to provide more details in this regard and, where appropriate, information on the outcome of such cases (recommendation (b)).

30. In relation to its recommendation (a), the Committee notes that in communications dated 25 July and 22 December 2016, the Government states that: (i) in June 2016, the Supreme Court of Justice settled the appeal for annulment lodged by the company against the 2014 arbitration ruling and that its judgment partially upheld the issues raised by the company and annulled certain clauses of the arbitration ruling in question: it also indicated that the company has implemented the mentioned Supreme Court of Justice ruling; and (ii) in October 2015, the Ministry of Labour confirmed, through the second-instance administrative authority, the decision to take no further action regarding the complaint filed in 2014 by SINTRAENFI before the labour inspectorate for a presumed violation of the rules governing collective labour law, in order to avoid rulings on the same subject possibly being duplicated, as the appeal for annulment was currently pending settlement by the Supreme Court. The Committee observes that the judicial and administrative proceedings instituted in relation to the alleged refusal by the company to bargain collectively with SINTRAENFI have finally been settled at the national level. In this context, the Committee will not pursue further the examination of these allegations.
31. As regards its recommendation (b), the Committee notes that in communications of 24 and 26 May 2016, the complainant organizations deny that the creation of three subsections (in Itagüí, Chía and Soacha) of SINTRAENFI constituted an abuse of rights or violated current legislation. The Committee also notes that in a communication of 25 July 2016, the Government forwards its observations relating to the status of the aforementioned requests, together with information provided by the company on the same requests. *In that regard, the Committee notes that in rulings issued in April 2014, and April and May 2015, the Supreme Court declared the election of the members of the three subsections of SINTRAENFI to be null and void, and ordered the Ministry of Labour to annul their registration. In this context, the Committee will not pursue further the examination of these allegations.*
32. *Having duly noted the information supplied by the Government and the complainant organizations, the Committee considers that the case is closed and will not pursue further its examination.*

### Case No. 3090 (Colombia)

33. The Committee recalls that this case, presented in May 2014 and examined in October 2018, relates to allegations of anti-union dismissals and obstacles to collective bargaining in respect of three trade unions affiliated to the Single Confederation of Workers of Colombia (CUT) (the National Union for those working in the transport of goods, documents, packages, couriers, mass transport, containers, and other similar services provided to industry and the economic sector in Colombia (SINTRAIMTCOL), the Union of Public Employees of the National Training Service – SENA (SINDESENA) and the Union of Workers for the San Rafael University Hospital (ASINTRAF)). On that occasion, the Committee made the following recommendations [see 387th Report, para. 282]:
- (a) The Committee requests the Government to take the necessary measures to ensure that all the pending disputes and complaints presented in respect of the National Union for those working in the transport of goods, documents, packages, couriers, mass transport, containers, and other similar services provided to industry and the economic sector in Colombia (SINTRAIMTCOL) to the Ministry of Labour, the Ombudsman's office and the Office of the Public Prosecutor are resolved as soon as possible. The Committee also requests the Government to provide information regarding the status of the process of withdrawing the legal personality and trade union registration of SINTRAIMTCOL. Furthermore, the

Committee asks the complainant organization to provide further information on the complaints filed in relation to the dissolution and liquidation of the trade union and to indicate whether legal action has been taken with regard to the dismissals of the trade union members Mr Marden Perea Martelo, Mr Edwin Isaac Villadiego Martínez and Mr José Augusto Bustamante del Toro, and if so, to provide information in that regard.

- (b) With regard to the Union of Public Employees of the National Training Service – SENA (SINDESENA), the Committee requests the Government and the complainant organization to provide copies of the agreements reached with the training institution on 22 September 2015 and 19 October 2016 with SINDESENA.
  - (c) With regard to the Union of Workers for the San Rafael University Hospital (ASINTRAF), the Committee requests the Government to conduct an inquiry into why the contracts of Ms Yolanda Cárdenas, Mr Mario Bermúdez and Ms Claudia Patricia Arboleda were not renewed and to keep the Committee informed in that regard. Furthermore, the Committee requests the complainant organization to explain why it has not taken legal action regarding the decision not to extend the contracts in question.
- 34.** In a communication dated 22 October 2018, the CUT confirms the information provided in the complaint in respect of the trade union ASINTRAF and indicates that: (i) the hospital dismissed a number of its members despite there not having been any complaints relating to the performance of their functions, and they were notified that their contracts were supposedly ending due to the expiry of the agreed term; (ii) the hospital dismissed two members of the executive committee of ASINTRAF, Dr Mayorga and Ms Moreno, and prompted the resignation of others who could no longer bear the persecution (the trade union went from having 290 members to having 130); and (iii) although the Ministry of Labour was aware of the matters mentioned above, substantive decisions were not taken in all the cases and in some cases the simple passage of time has been used against the workers and their rights, with the actions being declared time-barred.
- 35.** In a communication dated 28 February 2019, the Government indicates the following:
- (a) With regard to recommendation (a), the Government indicates that: (i) on 6 February 2014 the trade union members held a general assembly and agreed to dissolve the organization and proceed with its liquidation; (ii) SINTRAIMTCOL was dissolved and liquidated in accordance with the judgment of the Seventh Labour Court of Cartagena dated 14 September 2015, upheld by the High Court of Cartagena on 31 October 2016, with this ruling being the subject of an action for the protection of constitutional rights, which was not granted by the Supreme Court of Justice (the Government attaches the ruling of 2 November 2016 handed down by the Supreme Court of Justice); and (iii) in view of the fact that SINTRAIMTCOL ceased to exist due to the voluntary dissolution of its members, the claims that gave rise to the complaint are without merit. The Government also attaches a copy of the results of the complaints and disputes that SINTRAIMTCOL lodged against the enterprise (dating from 2012 to 2016 and consequently preceding the examination of the case).
  - (b) With regard to recommendation (b), the Government attaches a copy of the memorandum of understanding on labour matters of 22 September 2015 and a copy of the memorandum of understanding for the standardization of SENA activities of 19 October 2016.
  - (c) With regard to recommendation (c), the Government indicates that: (i) according to the hospital, Ms Yolanda Cárdenas, Mr Mario Bermúdez and Ms Claudia Patricia Arboleda were contracted on a fixed term basis on 1 April 2010 to cover the posts



of colleagues who were on holiday, maternity leave or incapacitated for longer than 15 days and that, once the periods of cover had been completed, there was no scope for them to be contracted on a permanent basis as there were no suitable vacant posts, and 7 November 2021 was the end date of the contracts; (ii) on 13 December 2016, Ms Yolanda Cárdenas filed a claim with the 21st Labour Court, asking it to declare the existence of an employment relationship; the claim was admitted on 7 December 2017 and contested on 30 January 2018, and a date is being awaited for the hearing; and (iii) the Ministry of Labour has lost the authority to begin an administrative labour investigation as over three years have elapsed since the events occurred, so it is impossible to initiate an administrative procedure for the imposition of penalties.

36. *The Committee recalls that the case concerns a complaint presented in 2014 and examined in October 2018. It observes that the CUT sent its communication in October 2018, that is to say, when the case was being examined by the Committee, which is why the communication does not refer to the recommendations contained in the report. The Committee observes that since its examination of the case, it has not received any communications from the complainant organization in respect of the recommendations made.*
37. *With regard to recommendation (a), the Committee notes that, according to the Government, the judicial proceedings in relation to the dissolution and liquidation of SITRAIMTCOL were concluded in 2016. It also notes that the Government attached a copy of the respective court judgments. Having received no information in this regard from the complainant, the Committee will not pursue its examination of this aspect of the case.*
38. *With regard to recommendation (b), the Committee notes that the Government attached a copy of the memorandum of understanding on labour matters and the memorandum of understanding for the standardization of SENA activities. The Committee recalls that in its last examination of this case it indicated that unless the complainant organization provided information to support the allegations relating to SINDESENA, the Committee would not pursue its examination of the allegations any further. Having received no information in this regard, the Committee will not pursue its examination of this aspect of the case.*
39. *With regard to recommendation (c), the Committee notes that the Government indicates that Ms Yolanda Cárdenas, Mr Mario Bermúdez and Ms Claudia Patricia Arboleda were contracted on a fixed term basis to cover temporary vacancies. The Government also states that Ms Yolanda Cárdenas filed a claim in 2016 and that a date was being awaited for the hearing. The Committee recalls that the dismissal of Ms Cárdenas dates back to 2012 and observes that neither the Government nor the complainant organization provide updated information regarding the abovementioned judicial proceedings. Furthermore, the Committee notes the Government's indication that the Ministry of Labour had lost the authority to begin an administrative labour investigation into the dismissals as over three years had elapsed since the events occurred. While recalling that, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1159**], the Committee is not aware of any complaints having been lodged with the Ministry of Labour in this regard in due time. In these circumstances, and on the basis of the elements available to it, the Committee considers this case closed and will not pursue its examination.*

## Case No. 2916 (Nicaragua)

40. The Committee recalls that this case, submitted in December 2011 and last examined in October 2015, concerns the transfer and subsequent dismissal of three trade union officials by the Ministry of Education on the pretext of restructuring. In its 376th Report, of October 2015, the Committee took note of the reinstatement of the trade union official Mr Randy Arturo Hernández López and requested the Government to keep it informed of any final decisions handed down concerning the industrial actions brought by the trade union officials Mr William José Morales Peralta and Mr Orlando José Jiménez Hernández. The Committee requested the complainant organization, the Administrative Workers' and Teachers' Union of the Ministry of Education (SINTRADOC) to provide information on the status of the appeal submitted to the labour courts for the failure to pay Mr Randy Arturo Hernández López's 13th salary.
41. In its communications of 15 December 2015, 5 December 2016, 9 February and 11 August 2017, 19 March and 8 October 2018, 25 March 2019 and 9 March and 21 September 2020, SINTRADOC states that: (i) the appeal for the failure to pay Mr Randy Arturo Hernández López's 13th salary is still pending; and (ii) although the reinstatement of Mr Orlando José Jiménez Hernández was ordered in a decision dated 24 April 2015, the State filed an appeal and, by a decision dated 18 April 2016, the National Labour Appeals Tribunal overturned the decision of the first instance and rejected the claim for reinstatement and for the payment of outstanding wages. The complainant organization states that the official filed an application for amparo (protection of constitutional rights) with the Supreme Court of Justice, but that this application was denied. The complainant organization requests the Committee to find in favour of Mr Orlando José Jiménez Hernández awarding him an amount in Nicaraguan córdobas or its equivalent in dollars for the damages caused to him by the State for having dismissed him arbitrarily and unilaterally, in violation of his trade union rights. The complainant organization also states that, despite having made a request to update the certification of the new executive committee on 28 July 2017, and despite having taken the necessary steps, the Directorate of Trade Union Associations of the Ministry of Labour had not granted the requested certification.
42. In its communications of 19 January and 25 May 2016, 2 October 2018, 30 May 2019 and 13 September 2021, the Government states the following:
- Mr Randy Arturo Hernández López was reinstated to his post on 12 February 2014. On 23 November 2015, the National Labour Appeals Tribunal, which is the highest labour court, handed down a final decision rejecting the appeal filed by the trade union official in relation to the non-payment of the 13th salary.
  - With regard to Mr Orlando José Jiménez Hernández, the Government states that there was no infringement of any labour or trade union rights, since, as the associated documents show, the Ministry of Education requested the Ministry of Labour to authorize the cancellation of the individual contract for just cause in view of a failure to comply with labour obligations in accordance with the law. The Ministry of Labour authorized the cancellation of the individual contract by Resolution No. 83/2010 and the Ministry of Education gave notice of the cancellation of the contract as from 19 August 2011. Exercising his rights, the official filed a claim for reinstatement, and the Ministry of Education filed an appeal against the corresponding decision to the National Labour Tribunal. By means of Final Decision No. 475/2016, dated 18 April 2016, the National Labour Appeals Tribunal rejected the claim for reinstatement and for the payment of outstanding wages, but upheld



his right to be paid social benefits such as holidays and the 13th salary; furthermore, the operative part of the decision, which has the status of *res judicata*, clearly states, in addition to rejecting Mr Jiménez Hernández's claim, that the payment of costs is not required. Consequently, there are no grounds whatsoever for his request for a financial award in Nicaraguan córdobas or the equivalent in dollars. The Government also states that Mr Jiménez Hernández filed an application for *amparo* with the Constitutional Chamber of the Supreme Court of Justice but that this application was not granted. The Government emphasizes that Mr Jiménez Hernández's claim has no legal basis whatsoever.

- In relation to Mr William José Morales Peralta, the Government states that, on 19 October 2016, the Sixth District Labour Court of Managua closed the proceedings relating to the claim for reinstatement and for the payment of outstanding wages. On 9 November 2015, the judicial authority had requested the complainant to provide a contact address in the city of Managua and, as he failed to do so, the judicial authority closed the proceedings in October 2016.
  - Regarding the application for the certification of SINTRADOC's executive committee in 2017, the Government states that it was on the grounds that the union failed to comply with the legal requirements, in terms of the documentation submitted to the Directorate of Trade Union Associations with the aim of updating its executive committee, that certification was not granted (the Government has attached documentation on the requirements that were not met, such as inconsistency in the dates indicated by the union).
- 43.** *The Committee recalls that the transfer and subsequent dismissal of the three trade union officials took place more than a decade ago and notes that, according to the associated documentation sent by the complainant organization and by the Government, the issues pending since the last examination of the case have now been resolved.*
- 44.** *With regard to the appeal that was filed by Mr Randy Arturo Hernández López (reinstated in 2014) for the non-payment of the 13th salary, the Committee notes that, as reported by the Government, on 23 November 2015, the National Labour Appeals Tribunal rejected the appeal.*
- 45.** *With regard to Mr Orlando José Jiménez Hernández, the Committee notes that, as reported by the Government and the complainant organization, on 18 April 2016, the National Labour Appeals Tribunal overturned the decision of the first instance ordering reinstatement and the payment of outstanding wages. The Government has attached copies of the decisions of the first and second instance. The Committee notes that, in the first instance, the court considered that the trade union official held the position of national supervisor of education and that, accordingly, the Teaching Careers Act should be applied, and therefore the process of cancelling the contract should be handled by the National Teaching Committee and not the Ministry of Labour as happened in this case. In the second instance, the tribunal held that it was sufficient only to comply with the requirements of the Labour Code (in other words, for the dismissal to be based on just cause attributable to the official and to have the prior authorization of the Ministry of Labour) without taking into account the special procedure under the Teaching Careers Act. The Committee notes that the tribunal did not order the payment of costs and that the application for *amparo* before the Supreme Court of Justice was denied. The Committee further notes that it does not appear from the above-mentioned documents that the transfer and subsequent dismissal of the official were on anti-union grounds or that there was an infringement of labour law.*

46. *With regard to Mr William José Morales Peralta, the Committee notes that, according to the Government, in 2016 the proceedings relating to the claim for reinstatement and for the payment of outstanding wages were closed.*
47. *In the light of the foregoing, and taking due note of the extensive documentation provided both by the complainant organization and by the Government subsequent to the last examination of the case, and of the fact that when it first examined this case, the Committee considered that it had insufficient information to conclude that the transfer and subsequent dismissal of the three officials were on anti-union grounds, the Committee considers that this case is closed and will not pursue its examination of it.*

\* \* \*

## Status of cases in follow-up

48. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following cases.

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2153 (Algeria)	March 2005	June 2021
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2745 (Philippines)	October 2013	October 2019
2749 (France)	March 2014	-
2797 (Democratic Republic of the Congo)	March 2014	-
2807 (Islamic Republic of Iran)	March 2014	June 2019
2869 (Guatemala)	March 2013	October 2020
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3003 (Canada)	March 2017	-
3011 (Turkey)	June 2014	November 2015
3024 (Morocco)	March 2015	March 2021
3036 (Bolivarian Republic of Venezuela)	November 2014	-
3046 (Argentina)	November 2015	-
3054 (El Salvador)	June 2015	-
3078 (Argentina)	March 2018	-
3081 (Liberia)	October 2018	October 2020
3098 (Turkey)	June 2016	November 2017
3100 (India)	March 2016	-

Case No.	Last examination on the merits	Last follow-up examination
3104 (Algeria)	March 2017	June 2021
3107 (Canada)	March 2016	-
3121 (Cambodia)	October 2017	October 2020
3142 (Cameroon)	June 2016	October 2020
3167 (El Salvador)	November 2017	-
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	-
3202 (Liberia)	March 2018	-
3212 (Cameroon)	October 2018	October 2020
3243 (Costa Rica)	October 2019	-
3248 (Argentina)	October 2018	-
3253 (Costa Rica)	March 2019	June 2021
3257 (Argentina)	October 2018	-
3285 (Plurinational State of Bolivia)	March 2019	-
3288 (Plurinational State of Bolivia)	March 2019	-
3289 (Pakistan)	June 2018	October 2020
3323 (Romania)	March 2021	-
3330 (El Salvador)	March 2021	-
3350 (El Salvador)	March 2021	-

49. The Committee hopes that these Governments will quickly provide the information requested.

50. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2153 (Algeria), 2341 (Guatemala), 2362 and 2434 (Colombia), 2445 (Guatemala), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2679 (Mexico), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2756 (Mali), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2793 (Colombia), 2816 (Peru), 2852 (Colombia), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2902 (Pakistan), 2924 (Colombia), 2934 (Peru), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 and 2960 (Colombia), 2976 (Turkey), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2994 (Tunisia), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3026 (Peru), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3065, 3066 and 3069 (Peru), 3072 (Portugal), 3075 (Argentina), 3077 (Honduras), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia),

3102 (Chile), 3103 and 3114 (Colombia), 3119 (Philippines), 3131 and 3137 (Colombia), 3146 (Paraguay), 3150 (Colombia), 3162 (Costa Rica), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3297 (Dominican Republic), 3314 (Zimbabwe), 3316 (Colombia), 3317 (Panama), 3320 (Argentina), 3341 (Ukraine), 3343 (Myanmar) and 3347 (Ecuador), which it will examine as swiftly as possible.

## Closure of follow-up cases

51. In its November 2018 report (GB.334/INS/10), the Committee informed the Governing Body that, from that moment onwards, any cases in which it was examining the follow-up given to its recommendations, for which no information has been received either from the Government or from the complainant for 18 months (or 18 months from the last examination of the case) would be considered closed. At its current session, the Committee applied this rule to the following case: 3243 (Costa Rica).

\* \* \*

## Case No. 3379

### Definitive report

## Complaint against the Government of South Africa presented by the Association of Mineworkers and Construction Union (AMCU)

**Allegations: The complainant alleges mass dismissals of its members by a metal-producing company in the context of restructuring and alleges that sections 23(1) and 189(1) of the Labour Relations Act, on which the dismissals were based, are contrary to ILO Conventions on freedom of association, in that they exclude minority unions from retrenchment consultations and do not allow them to make observations in case of extension of collective bargaining agreements.**

52. The complaint is contained in a communication dated 14 April 2020 from the Association of Mineworkers and Construction Union (AMCU).
53. The Government provided its observations in a communication dated 15 December 2020.
54. South Africa has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainant's allegations

55. In its communication dated 14 April 2020, the complainant alleges the illegal dismissal of 103 of its members by the Royal Bafokeng Platinum Limited (hereinafter “the metal-producing company” or “the company”) in 2015 and denounces the lack of consultation with the complainant – a minority union – both during the retrenchment consultations and before the extension of the retrenchment agreement to its members in application of sections 23(1) and 189(1) of the Labour Relations Act (LRA) (see appendix). The complainant alleges that, in practice, employees facing mass retrenchments have no right to be represented by minority unions of their choice in circumstances where other unions have concluded a collective agreement with the employer, that any retrenchment agreement reached between the employer and a majority union can be extended to minority union members without any participation from the workers’ union of choice and that the national laws governing the subject are thus not in line with the principles of freedom of association.
56. In particular, the complainant indicates that at the time of the dismissals it was a minority union at the company, representing 11 per cent of the total workforce and did thus not have organizational rights. As for the context of the dismissals, the complainant states that the company concluded a collective agreement with two other unions – the National Union of Mineworkers (NUM), which represented around 56 per cent of the workers, and the UASA – The Union (UASA), which represented 2 per cent of the workforce. The collective agreement provided for a retrenchment exercise, in consultation with the NUM and the UASA, which led to the conclusion of a retrenchment agreement, which was extended to apply to the complainant’s members in line with section 23(1)(d) of the LRA. The agreement stated that 103 AMCU members would be retrenched and that any unfair dismissal dispute that could arise therefrom would be waived and considered as fully and finally settled. Not having been informed about the dismissals, the concerned workers arrived at work on 30 September 2015, were herded into buses by the company’s security personnel and were issued notices of dismissal, even when the fixed-term contracts of some of them did not contain a clause permitting the company to retrench them.
57. The complainant first launched an application before the Labour Court to challenge the procedural fairness of the dismissals under section 189A(13) of the LRA, as well as the substantive fairness of the dismissals before the Commission for Conciliation, Mediation and Arbitration, which ruled in November 2015 that it lacked jurisdiction to conciliate the matter. During the proceedings, the company claimed that the retrenchments were permissible, as the consultation agreement did not require the company to consult with the AMCU, and that the concerned employees were non-suited because it had been agreed that their claims were fully and finally settled and waived. The company’s defence was upheld and the AMCU thus filed an application to challenge the constitutionality of sections 23(1) and 189(1) of the LRA on the basis that they violated the right of freedom of association. The complainant submits that the Minister of Defence played an active role in opposing the AMCU’s claim throughout the process and the respondents contended that the principle of majoritarianism (as developed in the collective bargaining context) could also be used to retrench employees without consulting with their trade union and to hold them bound to a collective agreement with another trade union which extinguishes their right to challenge the fairness of their retrenchment. The Labour Court, the Labour Appeal Court and the Constitutional Court upheld the company’s defence.

58. Firstly, the complainant argues that by promulgating the above sections of the LRA and defending the conduct of the company, the Government acted in breach of Conventions Nos 87 and 98 and that the majority judgment of the Constitutional Court failed to give effect to these Conventions and to the right of freedom of association. Instead, it puts forward the minority judgments which recognize the right of all minority unions to participate in retrenchment consultations as the failure to permit such participation undermines the right to freedom of association and thus fails to give effect to ILO Conventions. According to the complainant, forcing workers to be represented by a rival union is incompatible with freedom of association, even more so in the context of the country where the rivalry between the NUM and the AMCU is extreme and has on many occasions led to bloodshed. The involvement of minority unions is therefore fundamental to ensure a fair and equitable outcome.
59. Secondly, the complainant considers that the ILO sets a higher standard of procedural fairness than that in sections 23 and 33 of the LRA by providing that non-parties should be given an opportunity to submit their observations or make representations before any extension of a collective agreement. The ILO, while promoting majoritarianism, also sets a higher standard than section 189 of the LRA, by providing that minority unions should be involved in at least making representations or having the right to speak. The complainant therefore alleges that the country's extension and retrenchment consultation provisions clearly do not contain such safeguards, as illustrated by the AMCU, which was not given an opportunity to submit observations, make representation or even speak during the retrenchment consultations before the extension of the retrenchment agreement. The complainant also states that, in line with the Collective Agreements Recommendation, 1951 (No. 91), procedural rules need to allow for a transparent decision-making process in which due consideration is given to the views of non-parties to the agreement before the extension decision is taken.
60. Thirdly, the complainant argues that the extension process permitted by section 23 of the LRA does not involve an independent agency and extensions are permitted between employers and majority unions in a process which is secret, lacks transparency and excludes minority unions. Objective, precise and pre-established criteria must be set in order to avoid any risk of bias or abuse in a context in which the most representative trade unions are given certain rights and advantages which are absent from section 23 of the LRA. The complainant submits that these are important safeguards to ensure proper protection of the right to freedom of association.
61. Finally, the complainant submits that the law, as promulgated in sections 23 and 189 of the LRA and as interpreted by the Constitutional Court and supported by the Government, clearly discriminates against minority unions and their members by effectively banning them from participating in instances as in the present case.
62. In line with the above, the complainant asks the Committee to request the Government to: (i) take immediate steps to reform its laws and provide expressly for minority trade unions to have the right to represent their members during retrenchment consultations and to submit observations, make representations and have the right to speak to the employer during retrenchment consultations irrespective of any extension of collective agreements to minority union members; (ii) ensure that extensions of collective agreements are supervised by an independent agency and set objective, precise and pre-established criteria for extensions in order to avoid any risk of bias, abuse or discrimination; and (iii) ensure that the company takes steps to reinstate the retrenched workers and to involve the AMCU in the consultation and extension process, or alternatively pay each of the AMCU's members 12 month-compensation.



## B. The Government's reply

- 63.** In its communication dated 15 December 2020, the Government states that the complainant's main allegation is that sections 23 and 189 of the LRA discriminate against minority unions and their members by effectively banning them from participating in the decisions to extend collective agreements to minority unions and their members and in retrenchment consultations. The Government summarizes the essence of the complaint to be to request the Government to apply the LRA in a manner which the complainant believes to be consistent with ILO Conventions, in particular to: (i) recognize the right of all minority unions to participate in retrenchment consultations; (ii) with regard to the standard of procedural fairness, provide that non-parties should be given an opportunity to submit their observations or make representations before any collective bargaining agreement is extended to them and provide that minority unions should be involved in at least making representations or have the right to speak during negotiations or consultations on retrenchments; and (iii) provide for the involvement of minority unions and a role for an independent agency in case of extension of collective agreements.
- 64.** The Government indicates that the complaint has been subject to judicial scrutiny at the national level at the Labour Court, the Labour Appeal Court and the Constitutional Court, which held that the LRA was in compliance with the South African Constitution and with ILO Conventions on freedom of association. It points out that the complainant recognizes the binding nature of the Constitutional Court judgments with regard to its complaint, as well as the promotion of majoritarianism by the ILO.
- 65.** With regard to the issue of retrenchment consultations, the Government emphasizes the judgment of the Constitutional Court which stated that "consultation is a statutory entitlement, flowing from the LRA, not a fundamental right enshrined in the Bill of Rights" and that it does not mean that "every union must be truly equal and enjoy each and every statutory entitlement, regardless of size". The Government adds that section 189 of the LRA was drafted with a view to providing the fairest procedure for dismissals for operational reasons in compliance with international standards, including the Termination of Employment Convention, 1982 (No. 158) and the Workers' Representatives Convention, 1971 (No. 135). It also considers that the proposed recommendations made by the complainant to include all minority unions in retrenchment consultations would create chaos in the workplace by introducing processes that not only undermine the principle of majoritarianism, but also add to an already lengthy process further processes that would undermine the requirement to conclude consultations expeditiously.
- 66.** The Government also indicates that the courts have held on numerous occasions that the hierarchy that governs the consultation process under section 189 of the LRA realizes the purpose of the law, which is the promotion of orderly collective bargaining. To allow a multiplicity of small unions to participate in retrenchment consultations under section 189 of the LRA would defeat the very purpose of promoting orderly collective bargaining. Furthermore, the exclusion of minority union members from retrenchment consultations does not create a disadvantage since it is an objective process that affects workers in a given category regardless of their union affiliation. In the specific case, all employees were equally represented by the recognized union, retrenchments were collective in nature with collective outcomes and the AMCU members were thus not going to influence the outcome any differently even if they had participated in the consultations.

67. The Government adds that while the complainant alleges that sections 23 and 189 of the LRA clearly discriminate against minority unions and their members by effectively banning them from participating in instances as in the present case, this was not borne out by the judicial scrutiny of the relevant sections. In particular, the Constitutional Court held that “the LRA, though premised on majoritarianism does not make it an implement of oppression. It does not entirely suppress minority unions. Its provisions give ample scope for minority unions to organize within the workforce – and to canvass support to challenge hegemony of established unions. It is precisely because the LRA accords the AMCU these rights that the AMCU, as an insurgent force in the established union field, was able to increase its membership, its strength and its influence as powerfully as it has. And this is important in determining the extent of the limitation on rights that section 23(1)(d) imposes.” The Government therefore submits that the safeguards provided in sections 23 and 189 of the LRA sufficiently protect individuals and minority union members in the event of retrenchments and that these protections have been subjected to judicial scrutiny and were found sufficient and in compliance with international standards.
68. In conclusion, the Government urges the Committee to find that there is no substance in the complaint since the laws are in compliance with ILO Conventions, provide sufficient safeguards for the protection of individual employees and minority unions also play a role in the implementation of the majoritarianism principle.

### C. The Committee’s conclusions

69. *The Committee recalls that the present case concerns allegations of mass dismissals of the complainant’s members by a metal-producing company in the context of economic restructuring, where the complainant – a minority union – was excluded from the retrenchment discussions and was not given an opportunity to provide observations on the extension of the retrenchment agreement to its members.*
70. *The Committee notes that there is no dispute with regard to the factual circumstances leading to the case, in particular that: (i) in 2015, the metal-producing company and two unions – the NUM representing the majority of the workers (56 per cent according to the complainant, 75 per cent according to the judgment of the Constitutional Court) and the minority UASA – concluded a collective agreement and later an addendum, in which the parties agreed to consult exclusively among each other over any dismissals for operational requirements; (ii) the consultation culminated in the signing of a retrenchment agreement, which was extended in terms of section 23(1)(d) of the LRA to employees who were not members of the parties to the agreement, in particular to members of the AMCU, and also contained a full and final settlement clause whereby all those party to the agreement waived their rights to challenge the lawfulness or fairness of their retrenchment; and (iii) as a result of the retrenchment exercise, a part of the workforce was dismissed (the complainant submits that the 103 dismissed employees were all members of the AMCU, while the judgment of the Constitutional Court indicates that 103 employees were dismissed, some of whom were AMCU members). The Committee observes, however, that there is a difference of opinion between the complainant and the Government on whether the exclusion of the complainant, as a minority union, from retrenchment discussions and from providing observations on the extension of the retrenchment agreement to its members, under sections 23(1) and 189(1) of the LRA, was in compliance with the principles of freedom of association and collective bargaining.*
71. *The complainant for its part alleges that the application in practice of sections 23(1) and 189(1) of the LRA is contrary to the principles of freedom of association and collective*



*bargaining in that it effectively bans minority unions from representing their members in case of mass retrenchments in circumstances where other unions have concluded a collective agreement with the employer and that forcing workers to be represented by a rival union is also incompatible with freedom of association, especially in the context of the country where the rivalry between the NUM and the complainant is extreme and has on many occasions led to bloodshed. The complainant therefore suggests that the right of all minority unions to participate in retrenchment consultations is fundamental to ensure a fair and equitable outcome.*

72. *The Committee however notes that the Government contends that section 189 of the LRA was drafted with a view to providing the fairest procedure for dismissals for operational reasons in compliance with international standards, that the hierarchy that governs the consultation process realizes the purposes of the LRA, which is the promotion of orderly collective bargaining and that the recommendations made by the complainant to allow a multiplicity of minority unions to participate in retrenchment consultations would create chaos in the workplace by undermining the principle of majoritarianism and the requirement to conclude consultations expeditiously. The Committee observes that, according to the Government, the safeguards provided in the above sections of the LRA sufficiently protect individuals and minority union members in the event of retrenchment, even if they are excluded from consultations, since retrenchment is an objective process affecting workers in a given category regardless of their union affiliation and all employees in this specific case were equally represented by the recognized unions. The Committee further notes from both the complainant's and the Government's information that the substance of the case underwent judicial scrutiny by the Labour Court, the Court of Appeal and the Constitutional Court, all of which held that sections 23(1) and 189(1) of the LRA were in line with Conventions Nos 87 and 98, in that they promoted majoritarianism but also provided for safeguards of the rights of minority unions. The Courts held in particular that the legislator had opted for a system where a majority trade union, after concluding a collective agreement with an employer, enjoyed the exclusive right to be consulted during a retrenchment process and that the exclusion of minority unions from retrenchment consultations did not mean that their members were not represented.*
73. *The Committee understands from the above that the main issue of the case is the extent to which minority unions can participate in negotiations with the employer on retrenchments affecting their members in the context of enterprise restructuring under section 189(1) of the LRA and whether, in the specific case of the complainant, its exclusion from the retrenchment consultations was in line with the principles of freedom of association and collective bargaining. The Committee observes that the legislation in the country opted for a system where the most representative organization enjoys privileges with regard to collective bargaining rights so as to facilitate orderly collective bargaining and that section 189(1) of the LRA establishes a hierarchy in the consultation process in case of mass dismissals, where the employer is firstly obliged to consult any persons required to be consulted as per a valid collective agreement and only in the absence of a collective agreement, should the consultations involve a workplace forum, any registered trade union whose members are likely to be affected by the proposed dismissals or the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose. The Committee recalls in this regard that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1351]. The Committee therefore considers that, as drafted, section 189(1) of the LRA is not per se incompatible with*

*freedom of association in that, while giving priority in retrenchment negotiations to trade unions which have concluded a collective agreement with the employer, it also provides for consultations with other unions or directly with the concerned workers, in case no collective agreement providing for consultations had been concluded.*

- 74.** *The Committee takes due note of the complainant's concerns that forcing workers to be represented by a rival union is incompatible with freedom of association, specifically in case of retrenchment discussions and given the particular context of strong union rivalry in the country. The Committee recalls that minority trade unions that have been denied the right to negotiate collectively should be permitted to perform their activities and at least to speak on behalf of their members and represent them in the case of an individual claim [see **Compilation**, para. 545].*
- 75.** *The Committee further notes that the complainant also denounces the extension of the retrenchment agreement to its members, in that it holds the members bound to a collective agreement concluded by the employer with another trade union and extinguishes their right to challenge the fairness of their retrenchment, and alleges that the complainant was not given an opportunity to submit observations on the subject. In more general terms, the complainant alleges that the extension of collective agreements permitted by section 23(1) of the LRA does not involve an independent agency, that extensions are permitted between employers and majority unions in a process which is secret, lacks transparency and excludes minority unions and that objective, precise and pre-established criteria must be set to ensure proper protection of the right to freedom of association. The Committee observes that section 23(1) of the LRA allows the extension of collective agreements to employees who are not members of the trade union or trade unions party to the agreement if: the employees are identified in the agreement; the agreement expressly binds the employees; and the trade union or those trade unions (party to the agreement) have as their members the majority of employees employed by the employer in the workplace. The Committee understands that these conditions were fulfilled in the present case and recalls that when the extension of an agreement applies to workers who are not members of the signatory unions, this situation does not contradict the principles of freedom of association, in so far as it is the most representative organization that negotiates on behalf of all workers. The Committee observes that the arguments put forward by the complainant ignore the very basis of majority representation in collective bargaining to cover all workers so as to avoid differing treatment at the same workplace and to ensure orderly industrial relations. Moreover, the conditions for extension set out under Recommendation No. 91, referred to by the complainant, concern extension across an entire sector or territory which is of a quite different nature than the determination that a collective agreement concluded with majority representation in a given workplace would cover the entire workforce.*
- 76.** *In line with the above, the Committee considers this case closed and will not pursue its examination.*

## **The Committee's recommendation**

- 77.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to consider that this case does not call for further examination.**

## ▶ Appendix

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Section 23(1) of the Labour Relations Act 1 provides:

A collective agreement binds –

- (a) the parties to the collective agreement;
- (b) each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;
- (c) the members of a registered trade union and the employers who are members of a registered employers' organisation that are party to the collective agreement if the collective agreement regulates –
  - (i) terms and conditions of employment; or
  - (ii) the conduct of the employers in relation to the employees or the conduct of the employees in relation to the employers;
- (d) employees who are not members of the registered trade union or trade unions party to the agreement if –
  - (i) the employees are identified in the agreement;
  - (ii) the agreement expressly binds the employees; and
  - (iii) that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.

Section 189(1) of the LRA states:

When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult –

- (a) any person whom the employer is required to consult in terms of a collective agreement;
- (b) if there is no collective agreement that requires consultation –
  - (i) a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and
  - (ii) any registered trade union whose members are likely to be affected by the proposed dismissals;
- (c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or
- (d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.

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<sup>1</sup> Labour Relations Act, 1995.

Case No. 3210

Interim report

**Complaints against the Government of Algeria  
presented by  
the Autonomous National Union of Electricity and Gas Workers (SNATEG)  
supported by**

- Public Services International (PSI)**
- the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**
- the IndustriALL Global Union (IndustriALL)**
- the International Trade Union Confederation (ITUC)**
- the Autonomous General Confederation of Workers in Algeria (CGATA)**

**and**

- the Confederation of Productive Workers (COSYFOP)**

**Allegations: The complainant organization alleges a campaign of harassment and intimidation of its officers and members by an enterprise in the energy sector, the refusal to implement court decisions in favour of reinstatement for unfairly dismissed workers, as well as the public authorities' refusal to put an end to these violations of trade union rights**

- 78.** The Committee last examined this case (submitted in 2016) at its October–November 2020 meeting, when it presented an interim report to the Governing Body [see 392nd report, approved by the Governing Body at its 340th Session (October–November 2020), paras 178 to 216]. <sup>2</sup>
- 79.** The Government provided its observations in a communication dated 16 February 2021.
- 80.** Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

## **A. Previous examination of the case**

- 81.** In its previous examination of the case, the Committee made the following recommendations [see 392nd report, para. 216]:

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<sup>2</sup> [Link to previous examination.](#)

- (a) The Committee expects the Government to take all necessary steps to ensure the execution without further delay of court and labour inspectorate decisions concerning the reinstatement of SNATEG members without loss of pay. The Committee requests that the Government keep it informed of any new developments in this regard.
- (b) The Committee also expects the Government to take all necessary steps to ensure that outstanding appeals are dealt with without further delay. The Committee requests the Government and the complainant to keep the Committee informed of any new developments regarding the status of the appeals.
- (c) The Committee, noting with concern the indication that Ms Sarah Benmaiche, like her family, has been subjected to intimidation which has led her to withdraw from trade union action, urges the Government to inform it without delay of her professional situation, in particular whether she has been reinstated by the enterprise. Furthermore, the Committee requests the Government to indicate whether the Supreme Court has handed down its decision in the case of the dismissal of Mr Abdallah Boukhalfa and to clarify his employment situation.
- (d) The Committee expects the Government to establish a harmonious and stable climate of industrial relations in which trade union leaders can carry out their activities to defend the interests of their members without fear of criminal prosecution and imprisonment.
- (e) The Committee urges the Government to conduct an independent investigation to determine the circumstances that led to the administrative decision to dissolve SNATEG, despite evidence to the contrary presented to the authorities. Furthermore, the Committee, referring to the recommendations made by the Committee on the Application of Standards of the International Labour Conference in June 2019, expects the Government to review the decision to dissolve SNATEG without delay and urges it to keep the Committee informed of any action taken in this regard.
- (f) The Committee expects the Government to ensure respect for freedom of association when the police intervenes during peaceful demonstrations.
- (g) The Committee firmly urges the Government to implement its recommendations without delay in order to ensure an environment in the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.

## B. The Government's reply

- 82.** The Government provided documented responses to the Committee's recommendations in a communication dated 16 February 2021. With regard to the reinstatement of SNATEG members following court or labour inspectorate decisions (recommendation a), the Government indicates that the Committee on the Application of Standards of the International Labour Conference cited 86 cases of dismissal and that information on all of these cases was provided to the Committee at the Conference in June 2019, and then in October and November 2019. The Government provides the following information concerning the trade union leaders who, according to the complainant, have still not been reinstated: (i) Mr Abdelkader Kouafi, Secretary-General of the union, was dismissed for abandoning his post and convicted of slander; (ii) the dismissal of Mr Benarfa Wahid, Chairperson of the eastern national committee, was confirmed by the ruling of Tebessa Court in July 2019, and then at appeal; (iii) the dismissal with compensation of Mr Araf Imad, Chairperson of the southern national committee, was confirmed by a decision of the Biskra Court of May 2019; (iv) Mr Djeha

Makhfi, Chairperson of the MPVE union section, was dismissed for professional misconduct after appearing before a disciplinary council; he has not brought any action appealing for his reinstatement; (v) the dismissal for professional misconduct of Mr Benhadad Zakaria, member of the national committee, was confirmed by a ruling of the Mila Court in November 2018; (vi) the dismissal for professional misconduct of Mr Slimani Mohamed Amine Zakaria, Chairperson of the national committee for young workers, was confirmed by a ruling of the Mila Court of December 2018; (vii) the dismissal of Mr Chertioua Tarek, Chairperson of the communications committee, was confirmed by a ruling of the Mila Court of November 2018; (viii) the dismissal for professional misconduct of Mr Mekki Mohamed, member of the national committee, was confirmed by a ruling of the El Attaf Court of December 2018; (ix) Mr Guebli Samir, Chairperson of the central national committee, was dismissed for abandoning his post and has not brought any legal action in this regard; (x) the dismissal for abuse of trust of Mr Meziani Moussa, President of the National Federation of Gas and Electricity Distribution Workers, was confirmed by a ruling of the Bouira Court in April 2018, and then at appeal.

- 83.** Regarding the Committee's recommendations with respect to the situation of Ms Sarah Benmaiche, member of the union's Women's Committee, the Government indicates that it appears, from the information provided, that she was dismissed for third-degree professional misconduct (verbal abuse, insults, rude remarks against the hierarchy) after having appeared before a joint commission that hears disciplinary matters in the presence of two representatives of the enterprise and two representatives of the workers. According to the Government, she has not brought any action against the enterprise, and the procedure for assignment to another place of work has not been successful due to her disciplinary history. Finally, with regard to the situation of Mr Abdallah Boukhalifa, the Government indicates that he has been reinstated in his job and is continuing his work at the enterprise.
- 84.** Concerning the allegations by the complainant organization that the majority of the workers reinstated at the enterprise were obliged to resign from membership of SNATEG and join another trade union operating at the enterprise, the Government indicates that labour legislation guarantees workers the freedom to organize themselves in workers' organizations, and to join or to resign from union organizations, which are voluntary acts.
- 85.** In response to the recommendations concerning the need to establish a harmonious and stable climate of industrial relations in which trade union leaders can carry out their activities to defend the interests of their members without fear of criminal prosecution and imprisonment (recommendation d), the Government states that labour legislation fully guarantees workers and union representatives a calm and peaceful climate that allows them to freely carry out their union activities for the purpose of defending their members' material and moral interests. In addition, the Government recalls that labour legislation recognizes labour parties and grants them the right to negotiate conditions of work and employment at the level of the enterprise or above. Furthermore, representative trade unions are consulted about economic and social development plans through tripartite and bipartite consultation. Finally, the Government declares that it wishes to examine, with the social partners, how to improve the right to organize, and the means and modalities that would help everyone take on the duties recognized by law.
- 86.** With regard to the Committee's recommendations concerning the administrative decision to dissolve SNATEG (recommendation e), the Government reiterates that the voluntary dissolution of that union complies with the legal provisions in force and its



statutes. According to the official record of the court bailiff dated 7 October 2017, the voluntary dissolution was raised unanimously by the members of the general assembly. The Government recalls that the voluntary dissolution of trade union organizations is established in the provisions of Act No. 90-14 of 2 June 1990 on the arrangements for the right to organize, notably its article 28, which provides that the dissolution of a trade union organization may be voluntary or decided through judicial proceedings, and its article 29, which provides that voluntary dissolution is decided by the members of the trade union organization or their regularly designated delegates and in accordance with the statutory provisions. The Government reiterates that its position is based on the principles of non-interference and recalls that no person may impede the freedom and will of the members of SNATEG to dissolve the union, in accordance with the law and its statutes. The Government questions the insistence of the Committee concerning the voluntary dissolution of SNATEG.

87. Regarding the need to ensure respect for freedom of association when the police intervene during peaceful demonstrations (recommendation f), the Government states that public demonstrations are covered by a legal and regulatory instrument that guarantees demonstrators the exercise of their right to express their opinions, as well as the protection of citizens' property and freedom. Furthermore, the public authorities have introduced training for law enforcement agents, in addition to their basic training, on respect for the right of citizens to peaceful demonstration. Finally, the Government observes that peaceful demonstrations take place without reports of harm to demonstrators and public road users.
88. In conclusion, the Government declares its determination to resolve all the workers' cases identified by the Committee, in accordance with labour legislation and regulations. It indicates that it is continuing efforts to strengthen freedom of association and the effectiveness of the provisions that protect against anti-union discrimination and ensure the free functioning of trade union organizations. Finally, the Government is committed to continuing efforts to amend the legal provision regulating labour relations in order to bring it into line with the provisions of international labour Conventions, in particular the provisions of Convention No. 87.

## C. The Committee's conclusions

89. *The Committee recalls that the present case concerns allegations that the enterprise SONELGAZ (hereafter, the enterprise) has refused to allow an officially registered trade union to carry out its activities, has undertaken a campaign of harassment against the union's officers and members, has dismissed the majority of the union's members, and that the public authorities have refused to put an end to the violations of trade union rights and enforce court rulings in the union's favour, and have registered the trade union's dissolution despite evidence to the contrary.*
90. *In its previous consideration of the case, the Committee referred to a list of union members (members of its National Board, national committees, national federations and trade union branches in the wilayas) who, according to the complainant, were wrongfully dismissed by the enterprise in 2017, but have not been reinstated, despite court or labour inspectorate decisions in their favour. The Committee notes that the Government has provided the following information on the situation of the trade unionists concerned: (i) Mr Kouafi Abdelkader, Secretary-General of SNATEG (the Government had previously declared that he was not a member of staff at the enterprise), was dismissed for abandoning his post (according to the complainant organization, he benefits from the decision of the Blida Court of 19 December 2019 ordering his reinstatement); (ii) the dismissal of Mr Benarfa Wahid,*

*Chairperson of the eastern national committee, was confirmed by a ruling of the Tebessa Court in July 2019, and then at appeal (according to the complainant organization, he benefits from the decision of the Tebessa Court of 31 December 2018 ordering his reinstatement); (iii) the dismissal with compensation of Mr Araf Imad, Chairperson of the southern national committee, was confirmed by a decision of the Biskra Court of May 2019 (according to the complainant organization, he benefits from the decision of the Biskra Court of 17 February 2019 ordering his reinstatement); (iv) Mr Djeha Makhfi, Chairperson of the MPVE union section, was dismissed for professional misconduct after appearing before a disciplinary committee. He has not brought legal action against the dismissal decision (according to the complainant organization, he benefits from the decision of the Constantine Court of 22 January 2019 ordering his reinstatement); (v) the dismissal for professional misconduct of Mr Benhadad Zakaria, member of the national committee, was confirmed by a decision of the Mila Court in November 2018 (according to the complainant organization, he benefits from the decision of the Mila Court of 15 November 2017 ordering his reinstatement); (vi) the dismissal for professional misconduct of Mr Slimani Mohamed Amine Zakaria, Chairperson of the national committee for young workers, was confirmed by a decision of the Mila Court of December 2018 (according to the complainant organization, he benefits from the decision of the Mila Court of 15 November 2017 ordering his reinstatement); (vii) the dismissal of Mr Chertioua Tarek, Chairperson of the communications committee, was confirmed by a ruling of the Mila Court of November 2018 (according to the complainant organization, he benefits from the decision of the Mila Court of 15 November 2017 ordering his reinstatement); (viii) the dismissal for professional misconduct of Mr Mekki Mohamed, member of the national committee, was confirmed by a decision of the El Attaf Court of December 2018; (ix) Mr Guebli Samir, Chairperson of the central national committee, was dismissed for abandoning his post and has not brought legal action against the dismissal decision; (x) the dismissal for abuse of trust of Mr Meziani Moussa, President of the National Federation of Gas and Electricity Distribution Workers, was confirmed by a decision of the Bouira Court in April 2018, and then at appeal; (xi) Ms Sarah Benmaiche, member of the Women's Committee, was dismissed for professional misconduct and has not brought legal action against the dismissal decision (according to the complainant organization, Ms Benmaiche benefits from a court decision noting harassment against her and ordering her reinstatement, without providing the date of that decision); (xii) Mr Abdallah Boukhalfa has been reinstated in his job.*

- 91.** *While taking note of this information, the Committee recalls that the complaint originally referred to the leaders and members of the abovementioned trade unions as having benefited from court or labour inspectorate decisions ordering their reinstatement due to wrongful dismissal. The information provided by the Government, however, seems to refer to decisions of courts of the first instance or of appeal that run counter to the unionists' claims. The Committee possesses divergent information on this matter, and it is difficult for it to establish with certainty the link between the reinstatement decisions to which the complainant organization refers, and which the Committee recalls above, and the decisions confirming dismissals to which the Government refers, all taken between 2018 and 2019. Furthermore, given the summary nature of the decisions provided by the Government, it is difficult for the Committee to observe whether the anti-union nature of these dismissals was taken into account by the courts involved. Given the divergent accounts, at this stage, the Committee must limit itself to requesting the Government to provide additional information on the situation of Kouafi Abdelkader, Benarfa Wahid, Araf Imad, Djeha Makhfi, Benhadad Zakaria, Slimani Mohamed Amine Zakaria, Chertioua Tarek and Sarah Benmaiche, in view of the information on the court decisions ordering their reinstatement, which is not consistent with the statements of the Government. The Committee requests the complainant organizations to*



inform it, as appropriate, of any recourse against the court decisions mentioned by the Government and their outcome.

92. In addition, noting that the Government's list does not refer to the situation of Mr Benzine Slimane, President of the National Federation of Security and Prevention Workers, who, according to the complainant organization, has still not been reinstated despite a court decision in his favour, the Committee requests the Government to provide information on his situation.
93. Finally, although it seems that the majority of the cases on dismissal of SNATEG members have been resolved through reinstatement in the workplace, according to the successive lists provided by the Government, the Committee notes with concern that, ultimately, a particularly large number of SNATEG leaders and representatives have been dismissed by the enterprise, and in a context of conflict and harassment. In particular, the Committee wishes to recall that, especially at the initial stages of unionization in a workplace, dismissal of trade union representatives might fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply join the union [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1131].
94. In the present case, the Committee deeply deplores the situation of conflict between the enterprise and SNATEG since 2015, the disciplinary measures and mass dismissal of union members in 2017, and the uncertainty associated with different means of recourse against the dismissal decisions, yet also – as the Committee noted in its previous consideration – the numerous complaints brought against SNATEG leaders between 2017 and 2018, in some cases at the initiative of the public authorities themselves, have been detrimental to the conduct of union activities and also constitute intimidation that hinders the free exercise of freedom of association at the enterprise.
95. During its previous consideration of the case, the Committee reviewed in detail the information provided by the complainant organization and the Government, which maintain diverging positions regarding the voluntary dissolution of SNATEG. In this regard, the Committee has noted that the Government maintained that the union's dissolution was registered in an act of the court bailiff at a general assembly of the union held in October 2017, although the SNATEG statutes provide that its dissolution may only be decided by a national congress. Therefore, the general assembly mentioned by the Government does not appear to have been the competent body to decide to dissolve SNATEG, by virtue of the texts governing the functioning of the union. The Committee has also noted that the administrative authorities have decided to uphold the union's dissolution, in spite of the records of the congress of SNATEG held in December 2017, at which all delegates from the wilayas voted for the non-dissolution of the union. The Committee asked the Government to conduct an independent inquiry to determine the circumstances that led to the administrative decision recognizing voluntary dissolution of SNATEG, despite evidence to the contrary presented to the authorities. Meanwhile, the Committee, with reference to the recommendations made by the Committee on the Application of Standards in June 2019, indicated that it expected the Government to review the decision to dissolve SNATEG without delay.
96. The Committee notes with deep regret that the Government's response is limited to reiterating that the voluntary dissolution of SNATEG conforms to the legal provisions in force and to the union's statutes. According to the official record of the court bailiff dated 7 October 2017, voluntary dissolution was raised unanimously by the members of the general assembly. Furthermore, the Government reaffirms its position, which is based on the principle of non-interference. Noting the Government's indication that it questions the Committee's insistence

concerning the dissolution of SNATEG, the Committee recalls that its mandate consists of determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions. However, it wishes to point out that the object of the special procedure on freedom of association is not to blame or punish anyone, but rather to engage in a constructive tripartite dialogue to promote respect for union rights in law and practice [see **Compilation**, paras 5 and 9]. The Committee's conclusions following consideration of the information provided to it on the issue led it to request that the Government urgently conduct an independent inquiry to determine the circumstances that led to the administrative decision recognizing the voluntary dissolution of SNATEG. The Committee is bound to urgently reiterate its request and expects the Government to review the decision to dissolve SNATEG without delay. The Committee urges the Government to keep it informed of all action taken in this regard.

97. In general, the Committee wishes to express its deep concern about the present case, which is characterized by the cumulative difficulties encountered by SNATEG leaders in the exercise of their legitimate union rights. During its successive examinations of this case, the Committee has noted that these difficulties include a campaign of repression against SNATEG leaders and members, mass dismissals and impunity regarding the enterprise's refusal to enforce reinstatement decisions, the slow administration of justice, difficulties in applying the law which led to the status of a trade union leader being called into question, interference in trade union activities, judicial harassment, and acts of police violence and intimidation during peaceful demonstrations. These difficulties have harmed the conduct of activities of a legally registered union and also constitute intimidation hindering the free exercise of freedom of association at the enterprise. Consequently, the Committee once again urges the Government to implement its recommendations without delay in order to ensure an environment within the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and in which workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation. Furthermore, the Committee encourages the Government to continue to train law enforcement officers on respect for the right of citizens to demonstrate peacefully, in addition to their basic training, and to include in the training the respect for freedom of association.
98. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

## The Committee's recommendations

99. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) Given the divergent information provided in this regard, at this stage, the Committee must limit itself to requesting the Government to provide additional information on the situation of Kouafi Abdelkader, Benarfa Wahid, Araf Imad, Djeha Makhfi, Benhadad Zakaria, Slimani Mohamed Amine Zakaria, Chertioua Tarek and Sarah Benmaiche, in view of the information on the court decisions ordering their reinstatement, which is not consistent with the information provided by the Government. The Committee requests the complainant organizations to inform it, as appropriate, of any recourse against the court decisions mentioned by the Government and their outcome.
  - (b) The Committee requests the Government to provide information on the situation of Mr Benzine Slimane, President of the National Federation of Security and Prevention Workers, who, according to the complainant

organization, has still not been reinstated despite a court decision in his favour.

- (c) The Committee is bound to urge the Government once again to conduct an independent inquiry to determine the circumstances that led to the administrative decision to dissolve SNATEG. Furthermore, the Committee expects the Government to review the decision to dissolve SNATEG without delay and urges it to keep the Committee informed of any action taken in that regard.
- (d) The Committee again firmly urges the Government to implement its recommendations without delay in order to ensure an environment at the enterprise in which trade union rights are respected and guaranteed for all trade union organizations, and workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.
- (e) The Committee encourages the Government to continue to train law enforcement officers on respect for the right of citizens to demonstrate peacefully, in addition to their basic training, and to include in the training the respect for freedom of association.
- (f) The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

## Case No. 3331

Report in which the Committee requests to be kept informed of developments

### Complaint against the Government of Argentina presented by

- the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and
- the Confederation of Workers of Argentina (CTA)

**Allegations: The complainants allege a delay in the granting of most representative trade union status to the complainant organization AGTSyP, as well as police repression, suspensions and arrests of workers who took part in protests and industrial action**

- 100.** The complaint is contained in a communication from the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and the Confederation of Workers of Argentina (CTA) dated 30 May 2018.
- 101.** The Government sent its observations in communications dated 31 May and 3 July 2019 and 9 September 2021.

102. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

103. In their communication dated 30 May 2018, the Trade Union Association of Subway and Light Rail Workers (AGTSyP) and the Confederation of Workers of Argentina (CTA) state that: (i) the AGTSyP was founded in 2008 as a first-level trade union entity for the workers of the Buenos Aires city subway transport service; (ii) the AGTSyP had to bring the case before the courts to demand that the administrative labour authority grant it trade union registration; and (iii) on 25 November 2010, the Ministry of Labour issued Decision No. 1381/2010 registering it as a first-level entity. The complainants argue that, with the "simple" trade union registration and by having greater worker representation in the sector, it in fact replaced the Automotive Tramway Union (UTA), a first-level association with most representative trade union status representing workers in the public transport and subway passenger sector in Argentina. The complainants indicate that this situation led to tensions and disputes between the unions because the displaced union did not accept its low representativeness among subway workers.
104. The complainants indicate that: (i) in view of the AGTSyP's larger membership (1,849 members; around 60 per cent of overall representation), in accordance with Act No. 23.551 on Trade Union Associations, on 31 July 2013 it applied for most representative trade union status; (ii) the UTA obstructed the application process and filed an appeal with the Ministry of Labour, which was referred to the Labour Chamber; (iii) the Chamber found the appeal inadmissible because it only has jurisdiction over challenges to final administrative decisions; (iv) once the file was referred back to the Ministry of Labour, three verification hearings were held to give both entities the opportunity to prove their membership and thus ascertain the most representative entity, but the UTA failed to appear at any of them and consequently the administrative authority issued Decision No. 1601, granting the AGTSyP most representative trade union status, in the exclusive domain of subway and light rail transport, without affecting the rest of the UTA's most representative trade union status, which it maintained for the remainder of automotive transport; (v) the UTA filed a judicial appeal against the decision granting the trade union status (without providing a single explanation for any grievance regarding this, and especially the reason for its failure to appear at the verification hearings) and, on 6 March 2017, Chamber II of the National Chamber for Labour Appeals overturned Decision No. 1601 on the grounds it involved merely formal issues, thus returning to zero the trade union status application process; (vi) the AGTSyP appealed the ruling before the Supreme Court, which did not process the appeal because, following its own doctrine, it deemed it not to be a "final ruling or comparable to such"; and (vii) the judiciary referred the file back to the Ministry of Labour on 13 April 2018 and, to date, it remains unresolved, leaving the AGTSyP unable to ever obtain its recognition as the most representative entity.
105. The complainants also indicate that the city of Buenos Aires subway concession holder, Metrovías S.A. (hereinafter enterprise A), and the public enterprise Subterráneos de Buenos Aires (SBASE) (hereinafter enterprise B) used the 2018 Supreme Court ruling as an excuse to restrict the AGTSyP's participation in the 2018 wage negotiations. They indicate that, although the Government of the City of Buenos Aires recognized the authority of its representatives to engage in joint wage negotiations, the AGTSyP did not agree with the proposal made by enterprises A and B and was excluded from the

negotiating table. They indicate more precisely that the AGTSyP refused to agree to a wage increase below inflation and that the aforementioned enterprises signed an agreement with the UTA that runs counter to the interests of subway workers and even imposes on AGTSyP members a contribution to the UTA equivalent to one per cent of their wages.

- 106.** The complainants indicate that: (i) from that moment on, the AGTSyP took two types of action in rotation on the different subway lines in Buenos Aires city: on the one hand, the turnstiles at the entrance to the subway were opened/released (in other words, passengers could use public transport without paying for a ticket) and, on the other hand, the partial and staggered interruption of train services, within certain hours and on specific lines. All these measures were announced in advance; (ii) in a statement dated 14 May 2018, enterprise A announced the suspension of more than 70 employees who had taken part in the protests, in response to which the union decided to take more extensive action and, in a statement dated 17 May 2018, enterprise A indicated that the suspension telegrams were sent because of the action taken to occupy the facilities, open the emergency doors and/or release turnstiles, and stressed that the situation did not violate the right to strike, given that those being sanctioned had taken part in illegal actions; the AGTSyP demanded the reinstatement of the suspended workers and on 18 May the enterprise announced that it had sent more than 100 suspension telegrams; and (iii) on 22 May 2018 enterprise A barged in with an “army” from the city police infantry guard, on subway line H, which had been suspended due to the strike called by the AGTSyP, repressing the protesting workers at the location with sticks and pepper spray, and arresting 16 of them, including the joint secretary of the union, Mr. Néstor Segovia, who, as reported by the Buenos Aires city authorities, have had criminal proceedings brought against them and been charged with resisting arrest and undermining authority (section 227 of the Criminal Code) and interrupting the public transport service (section 194 of the Criminal Code), which are legal provisions commonly used in Argentina to restrict the right to social protest.

## **B. The Government’s reply**

- 107.** In its communications of 31 May and 3 July 2019 and 9 September 2021, the Government indicates that the dispute has its origins in an alleged dispute over recognition of trade union representativeness between two unions contesting the representation of workers in the sector, with the courts intervening to settle the dispute. Regarding the trade union status of the AGTSyP, the Government indicates that in a ruling dated 6 March 2017, the National Chamber for Labour Appeals overturned Ministerial Decision No. 1601/15, which had granted most representative trade union status to the AGTSyP, on the grounds of various irregularities in the application process. In that ruling (attached by the Government), the Chamber indicated that it was overturning the aforementioned decision and referring the proceedings back to the administrative headquarters so that, once the formal irregularities had been rectified, it could rule again on the issue at hand (the granting of most representative trade union status). The Government indicates that these administrative proceedings have been suspended due to the pandemic (during 2020 administrative proceedings were suspended) and that they have recently been resumed, both entities having been ordered to forward the documentation submitted by each, for reciprocal recognition or to deal with any other issue on the matter. The Government considers this to be a dispute between two trade union organizations referred to the courts, which the ministry has been ordered to deal with in a certain way, and it is therefore no longer a matter involving the Government.



- 108.** Furthermore, the Government indicates that the industrial action carried out by the union in 2018 affected subway traffic in the City of Buenos Aires for more than 40 days and considers that the grievance should have been settled in another way, as it had had a detrimental effect on normal transit and traffic and even on the safety of citizens travelling to and from their work or homes.
- 109.** Regarding the alleged arrest of 16 workers and the trade union leader, the Government states that it has attached a report from the Ministry of Security of the Government of the City of Buenos Aires, which indicates that the protesters interrupted the enterprise's subway service line, preventing normal traffic on the system and operations, and that, when police personnel requested a dialogue, most of the protesters dispersed, while others locked themselves in the drivers' cabs. The report also indicates that, in this situation, the Intercommunal Transit Security Directorate intervened to protect worker and passenger safety, making the protesters come out of the cabs, who were then detained for infringement of article 69 of the Contravention Code and for undermining authority and resisting arrest. The Government indicates that the case is being handled by the prosecutor's office No. 12, which is responsible for contraventions and misdemeanours (Fiscalía Contravencional), headed by Dr. Daniela Dupuy, Secretary, and Dr. Tomas Vaccarezza, under File No. 248486/18.
- 110.** The Government attaches a copy of an agreement concluded between the Undersecretariat for Labour of the Government of the Autonomous City of Buenos Aires, the AGTSyP and enterprises A and B, dated 8 April 2019. The Undersecretariat for Labour also reports that it is engaging in dialogue with this association on a regular basis and at the latter's request.

### C. The Committee's conclusions

- 111.** *The Committee notes that the present case concerns, on the one hand, allegations relating to the delay in the granting of most representative trade union status to the complainant organization AGTSyP (representing workers in the Buenos Aires city subway service) and, on the other hand, allegations relating to police repression, suspensions and arrests of workers who took part in protests and industrial action.*
- 112.** *Regarding the most representative trade union status, the Committee notes that, according to the allegations: (i) the AGTSyP was founded in 2008, obtained its trade union registration in 2010 and applied for most representative trade union status in 2013; and (ii) although in 2015 the ministry granted it most representative trade union status (in the exclusive domain of subway and light rail transport), the UTA (a first-level association with most representative trade union status representing workers in the public transport and subway passenger sector in Argentina) filed administrative and judicial appeals. To date, the trade union status application process has not been completed (the National Chamber for Labour Appeals overturned the ministerial decision to grant most representative trade union status due to irregularities in the application process and the Supreme Court did not process the appeal, referring the file back to the ministry on 13 April 2018, and since then it has remained unresolved).*
- 113.** *In this respect, the Committee notes that, according to the Government, (i) the dispute has its origins in an alleged dispute over recognition of trade union representativeness between two unions contesting the representation of workers in the sector; (ii) in a ruling dated 6 March 2017, the National Chamber for Labour Appeals overturned Ministerial Decision No. 1601/15 (which had granted most representative trade union status to the AGTSyP), on the grounds of various irregularities in the application process and referred the proceedings back to the administrative headquarters so that, once the formal irregularities had been rectified, it could*

rule again on the issue at hand; and (iii) these administrative proceedings have been suspended due to the pandemic and have recently been resumed, both entities having been ordered to forward the documentation submitted by each, for reciprocal recognition or to deal with any other issue on the matter.

114. While taking due note of the Government's indication that the administrative proceedings have been suspended as a result of the pandemic, the Committee observes that the application process was initiated in 2013 and that the ruling of the National Chamber for Labour Appeals, to which the Government refers, dates from 2017. It also notes that, according to the complainants, the AGTSyP appealed this ruling before the Supreme Court (which did not process the appeal) and that the latter referred the file back to the Ministry of Labour on 13 April 2018. In other words, the application process for most representative trade union status, for which the Government has responsibility, has been pending a decision at the administrative level since the beginning of 2018.
115. While recalling that a matter involving no dispute between the Government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1610], the Committee however observes that the allegation in this case concerns the lengthiness of the procedure for obtaining trade union status following the remand of the matter to the Ministry of Labour. In this regard, the Committee recalls that where administrative decisions on the granting or revocation of most representative trade union status are challenged, the administrative and judicial proceedings need to take place without delay. The Committee recalls that there are other cases where it has already examined problems and delays similar to those described in the present complaint [see, for example, 376th report, paras 176–189, or 375th report, paras 15–21]. Taking due note of the Government's indication that the administrative proceedings have recently been resumed, the Committee requests the Government to inform it of any decision taken in this respect.
116. With regard to the allegation that, in the context of the action taken by the AGTSyP in 2018 (opening of turnstiles at the entrance to the subway and partial and staggered interruption of train services), enterprise A had suspended more than 100 workers and the police had repressed (with sticks and pepper spray) and arrested 16 of them, including the joint secretary of the AGTSyP, who allegedly had criminal proceedings brought against them, the Committee notes that: (i) as indicated in the complaint, enterprise A has stated that it did not infringe the right to strike and that it suspended those who had taken part in illegal actions such as the occupation of facilities, the opening of emergency doors and/or the release of turnstiles; and (ii) the Government indicates that subway traffic in City of Buenos Aires had been affected for more than 40 days and that when the police requested a dialogue most of the demonstrators dispersed or locked themselves in the drivers' cabs and the authorities intervened to protect worker and passenger safety, making the protesters come out of the cabs, who were then detained for infringement of article 69 of the Contravention Code (which provides for sanctions to be imposed on persons who intentionally interfere with public services such as transport) and for undermining authority and resisting arrest.
117. The Committee notes that the Government has failed to provide more detailed information in this respect, or to inform it whether, following the arrests, the workers and trade unionists concerned were held accountable in any way or sanctions imposed on them, or whether any judicial proceedings were instituted in this regard. The Committee recalls that, on numerous occasions, where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive

*activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations [see **Compilation**, para. 178]. In light of the foregoing, the Committee requests the Government to inform it of the results of any judicial proceedings that may have been instituted in relation to the workers who were arrested.*

**118.** *Lastly, the Committee notes that, as reported by the Government, on 8 April 2019 the Undersecretariat for Labour of the Government of the Autonomous City of Buenos Aires, the AGTSyP and the enterprises agreed on a retroactive adjustment to the wage scale and also agreed that the joint wage negotiations for the period from 1 March 2018 to 28 February 2019 were concluded and that no issues remained outstanding. The Committee notes that the Government has attached a copy of this agreement. The Committee also notes and welcomes the Government's indication that the Undersecretariat for Labour is engaging in dialogue with the AGTSyP on a regular basis and at the latter's request.*

## The Committee's recommendations

**119.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**

- (a) Taking due note of the Government's indication that the administrative proceedings have recently been resumed, the Committee requests the Government to inform it of any decision taken in this respect.**
- (b) The Committee requests the Government to inform it of the results of any judicial proceedings that may have been instituted in relation to the workers who were arrested.**

Case No. 3338

Definitive report

Complaint against the Government of Argentina

presented by

- the Confederation of Workers of Argentina (CTA Workers)
- the Independent Confederation of Workers of Argentina (Independent CTA) and
- the Association of State Workers (ATE)

**Allegations: Exclusion of the Association of State Workers from the central joint negotiating committee in the context of collective bargaining for workers of the Autonomous City of Buenos Aires**



120. The complaint is contained in communications from the Confederation of Workers of Argentina, the Independent Confederation of Workers of Argentina and the Association of State Workers (ATE) dated 3 July 2018 and 18 January 2019.
121. The Government sent its observations in a communication of May 2019.
122. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

## A. The complainant's allegations

123. In their communications, the complainant organizations allege that the ATE has been excluded from the collective bargaining process for public employees of the Autonomous City of Buenos Aires, and in particular from the central joint negotiating committee.
124. In their communication of 27 June 2017, the complainants state that the ATE has the trade union status and representative capacity to bargain collectively in the Autonomous City of Buenos Aires and has engaged in collective bargaining in the past with the authorities in this context. The complainants refer in particular to a collective agreement reached between the ATE and the Government of the City of Buenos Aires (GCBA) in 2010, after the courts had mandated the recognition of the ATE in 2008 (in a ruling acknowledging the ATE's right to be involved in the city's general collective bargaining processes and ordering its inclusion in the central joint negotiating committee). The complainants point out in this regard that, in the public sector in general, and in the Autonomous City of Buenos Aires in particular, as established under Act No. 471 on industrial relations in the public administration of the Autonomous City of Buenos Aires, there are multiple trade unions that have trade union status. In respect of the central joint negotiating committee for public employees in the executive branch of the Autonomous City of Buenos Aires, the complainants state that the unions with trade union status in the context of the general job classification structure are the ATE, the National Civil Servants' Union (UPCN) and the Union of State Workers of the City of Buenos Aires (SUTECBA). The complainants provide additional information to illustrate how the system of trade union pluralism works in other public sectors, for example pointing out how, in the education and health sectors, several unions participate at a single negotiating table.
125. The complainants allege that the GCBA has nevertheless been excluding the ATE from collective bargaining in the context of the general job classification structure, by including only SUTECBA in the central joint negotiating committee. In this regard, the complainants state, to support this allegation, that: (i) in response to the ATE's request of 24 February 2017 calling on the authorities to convene the central joint negotiating committee, the GCBA did not go ahead and convene the parties, but instead, on 9 March 2017, belatedly announced that the various associations with trade union status would be "called on to participate in the forthcoming bargaining process". The complainants consider this response to be a stalling tactic that circumvents the right to collective bargaining; and (ii) in the light of this response from the authorities, the ATE, by a communication of 14 March 2017, one last time called on the GCBA to convene the central joint negotiating committee within 48 hours with all the competent organizations and to refrain from bargaining without the participation of the ATE, failing which it would consider stepping up the corresponding trade union and legal action. Consequently, the complainants conclude their initial communication by calling for the convening of the

GCBA's central joint negotiating committee. They consider that the delays by the authorities in setting up the committee are inconsistent with the recognition that is given in other sectors – such as the education or health sectors – to joint bargaining with different organizations with trade union status. They refer to the recognition that is given to this model of trade union pluralism in the bargaining process in other legal systems, at both the national and the provincial levels, and claim furthermore that such pluralism is customary in the sector. The complainants also consider that the implementing authority is both judge and party to the dispute and they claim that, further to the request that was made, the Office of the Undersecretary of Labour, Industry and Trade did not convene the joint meeting, as the implementing authority for collective disputes and bargaining, thereby neglecting one of its duties and responsibilities and becoming complicit in the administration's bad faith in respect of bargaining.

- 126.** In their communication of 18 January 2019, the complainants add to their allegations by stating that: (i) the Government of the Argentine Republic and the GCBA, which share the same political affiliations, are not respecting the principles of freedom of association, by developing a systematic plan against the ATE aimed at undermining its representative status – a systematic plan that has various manifestations: the dismissal of trade union delegates, the seizure of union premises, challenges to union elections and exclusion from bargaining; (ii) throughout 2018, the authorities engaged in bargaining processes from which the ATE was systematically excluded and they refused to provide the information requested by the ATE (they did not answer the letters from the ATE requesting that it be sent the minutes of the joint negotiations and informed of the arrangements for the convening of the negotiating committee); (iii) the exclusion has not been limited to collective bargaining on the general job classification structure but has extended to the negotiating committee for health professionals of the Autonomous City of Buenos Aires; and (iv) on 20 September 2018, by resolution No. 1697/MEFGC/18, Joint Agreement No. 27/18 on wage increases for workers of the GCBA was put into effect exclusively with SUTECBA. The complainants call for the convening of the central joint negotiating committee of the GCBA and the central joint negotiating committee for health professionals of the GCBA with all competent parties, including the ATE.

## B. The Government's reply

- 127.** In its communication of May 2019, the Government denies the allegations made and submits the GCBA's observations in this regard.
- 128.** The authorities first recall the position of trade union law in the framework of public administration, pointing out: (i) that in the public administration there may be several trade union associations with overlapping trade union status, in other words trade unions that cover some or all of the same categories of persons and geographical areas in the context of collective bargaining – this is a situation that is codified in various laws, including National Act No. 24185 and Act No. 471; (ii) more than 60 trade union associations are operating in the area covered by the Autonomous City of Buenos Aires, and more than 20 of them have trade union status to represent, depending on the case, all or some of the workers of the GCBA; and (iii) there are three associations that have been granted trade union status to represent all the workers of the GCBA. These are: SUTECBA, with a membership comprising approximately 50 per cent of the workers in the general job classification structure; the ATE, with a membership of approximately 5.3 per cent; and the UPCN, with a membership of 2.5 per cent (the Government specifies that these percentages have been obtained by taking into account single memberships

and leaving out dual memberships, and explains that, in any case, even if the dual memberships were added, the final percentages would not change significantly).

- 129.** The Government rejects the accusations made by the complainants and states that not only has the right to freedom of association been fully respected, but that the ATE has always been accorded all the rights associated with its trade union status, even though it is far from being the union with the most representative status according to its membership figures, and that it has done nothing to prevent the ATE from exercising its right to bargain collectively. Indeed, the ATE itself acknowledges that it signed a collective agreement with the GCBA in 2010, but what it fails to acknowledge is that the GCBA has acted consistently since that time. In this regard, the GCBA sends copies of the collective agreements signed with the ATE up to 2016.
- 130.** The authorities point out that, in 2017 and 2018, it was of its own accord that the ATE did not sign any collective agreement, and they deny that the GCBA has not summoned the ATE. The GCBA emphasizes that it has never disregarded the right of the ATE to participate in collective bargaining and neither has it objected to entities banding together in a common cause to represent the collective interests of all workers. However, the trade union organizations with trade union status, far from making common cause, have chosen to express their views and to work separately, without harmonizing their actions. Consequently, the GCBA has been reaching agreements with some of the associations, and has never refused to engage in bargaining through the different forms that these associations have decided to take.
- 131.** In this context, the Government points out that the ATE did not make the slightest effort to establish collective representation before issuing its unilateral request to initiate a collective bargaining process (the first criterion under law for the determination of common cause is the existence of an agreement between the various trade union associations that wish to participate in the negotiating committee). On the contrary, the ATE has been responsible for many cases of direct action, including in parallel to its calls to negotiate, demonstrating its contempt for the idea of holding a broad and organized dialogue. In this regard, the Government provides detailed information on 40 cases of direct action staged by the ATE between February 2017 and January 2019, including acts of intimidation – including the seizure of public buildings and unlawful occupations – carried out at the same time as it was calling for the urgent convening of the central joint negotiating committee. The Government highlights how the ATE failed in this regard to follow the procedure for the prevention of collective disputes that had been agreed upon in article 35 of the collective agreement under resolution No. 2779/MHGC/2010 and specifies that many of these cases of direct action involving work stoppages in the GCBA were based on facts that were partially or totally unconnected to industrial relations.
- 132.** The Government adds that despite all this, it acted entirely in good faith and tried to stay out of the evident disputes between the various trade union associations (SUTECBA, the ATE and the UPCN), so that they could take a position on the proposal to close the pay scale for 2017 and draw up a schedule for pay increases for 2018. In this regard, denying the allegation that the ATE was systematically excluded during 2018, the authorities submit a copy of a communication sent to the ATE on 7 February 2018, calling a meeting, including with ATE members, to discuss, among other issues, collective bargaining for 2018. The Government stresses that the convocation letter was in no way discriminatory and that SUTECBA and the UPCN – which together represent 52.5 per cent of the contributing members – accepted the invitation. Nevertheless, before providing a formal reply, the ATE (which represents 5.3 per cent of contributing members) began publicly to issue calls to direct action. In this context, with the signing of agreements between

the GCBA and SUTECBA and the UPCN, and the tacit refusal of the ATE as shown by the direct action it took unilaterally, the negotiations between the Government and the workers' organizations naturally drew to a close. For its part, the ATE, finding itself in disagreement with the other organizations, unilaterally decided to call numerous work stoppages without invoking the aforementioned dispute prevention procedure. The Government considers it paradoxical that the ATE is belatedly – in other words, after the negotiations have ended – calling for the establishment of a single negotiating table with all the other trade union associations, while showing a marked disregard for the position that these other associations have already taken and trying, without success, to impose its own will. Consequently, the Government considers it prudent to call on the ATE to reflect and modify its intransigent position and offers to continue to make every effort through the GCBA to improve collective bargaining methods and labour relations in general through dialogue.

133. Furthermore, the Government maintains that the allegations of a systematic plan against the ATE in order to undermine its representative status, including the dismissal of delegates, the seizure of trade union premises and challenges to trade union elections are false, reckless and malicious. The Government stresses that these allegations are not backed up by any facts or evidence, and neither are they supported by any reference to their circumstances or to the persons allegedly affected by them. This even precludes the Government from defending itself. The authorities concerned add that it is totally untrue that ATE delegates have been dismissed and they state that the trade union officials elected by the ATE have at all times been granted unpaid leave and the corresponding special trade union protection. The Government also states that it is untrue that the ATE has been deprived of premises and maintains that the GCBA has been respectful of the mandates of the elected delegates and only challenges calls for elections that are made in blatant violation of the regulations in force.

## C. The Committee's conclusions

134. *The Committee notes that the complaint concerns the alleged exclusion of the ATE from collective bargaining for state workers of the Autonomous City of Buenos Aires, in particular in the central joint negotiating committee.*
135. *The Committee notes that each of the parties claims that the other did not act in good faith to promote collective bargaining in the Autonomous City of Buenos Aires. The complainants accuse the Government of exclusion from the bargaining process and the Government claims that the ATE, despite being representative only to a limited extent, did not follow the agreed dispute prevention procedure and chose to apply unilateral confrontational strategies instead of trying to reach agreements between the parties, which included other unions that, with approximately ten times the membership of the ATE, did participate in the bargaining process and reached an agreement with the Government.*
136. *In this regard and more broadly, the Committee recalls that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Compilation of decisions of the Committee on Freedom of Association**, Sixth edition, 2018, para. 1328].*
137. *With regard to the specific case, and although it does not have the elements to examine each of the allegations made between the parties, the Committee notes that, with regard to the allegations of systematic exclusion of the ATE from collective bargaining in the Autonomous City of Buenos Aires, the Government does not deny, but rather repeatedly acknowledges, the rights of participation that the ATE is calling for, and maintains that, even though it is*

*representative only to a limited extent (5.3 per cent of contributing members – compared to 50 per cent of the contributing members that are represented by SUTECBA), it is one of the three associations that have been granted trade union status (out of more than 60 that are operating in the Autonomous City of Buenos Aires) to represent all the workers of the GCBA. The Committee also notes that the Government provides evidence of having signed several agreements with the ATE resulting from collective bargaining in 2016 and 2017 (by submitting the relevant minutes) and, with regard to the main allegation of exclusion in 2018, the Government demonstrates that it summoned the ATE to a meeting of the central joint negotiating committee in order to discuss, inter alia, collective bargaining for 2018.*

- 138.** *With regard to the allegation that there is a systematic plan against the ATE aimed at undermining its representative status, which includes the dismissal of delegates, the seizure of trade union premises and challenges to trade union elections, the Committee observes that, as pointed out by the Government, these are general allegations that are unfounded and not backed up by documentary evidence that would enable the Government to respond adequately and the Committee to examine them. In this respect, the Committee wishes to recall that, in order to be able to examine allegations of violations of the principles of freedom of association and collective bargaining, these should be specified in detail and, as far as possible, accompanied by evidence. In these circumstances, the Committee will not proceed with the examination of this allegation.*
- 139.** *In the light of the foregoing (while welcoming the Government's call for dialogue in order to continue to promote the improvement of collective bargaining methods and industrial relations), the Committee invites the competent authorities to continue to promote collective bargaining in good faith in the Autonomous City of Buenos Aires with the different organizations that have recognized trade union status, which is the case of the ATE, in accordance with the applicable legislation and with a view to fostering harmonious industrial relations.*

## The Committee's recommendations

- 140.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee invites the competent authorities to continue to promote collective bargaining in good faith in the Autonomous City of Buenos Aires with the different organizations that have recognized trade union status, such as the Association of State Workers (ATE), in accordance with the applicable legislation and with a view to fostering harmonious industrial relations.**
  - (b) The Committee considers that this case does not call for further examination and is closed.**

## Case No. 3293

### Definitive report

#### Complaint against the Government of Brazil presented by

- the National Federation of State Judiciary Workers (FENAJUD)
- Public Services International (PSI)
- the Confederation of Public Servants of Brazil (CSPB) and
- the Union of Judiciary Civil Servants of Maranhão State (SINDJUS-MA)

**Allegations: The complainant organizations allege that, in the context of wage disputes, the unions of judiciary employees of the states of Minas Gerais and Maranhão are restricted in the exercise of their freedom of association by the judicial authorities of these states**

141. The Committee last examined this case at its June 2019 meeting and on that occasion presented an interim report to the Governing Body [see 389th Report, paras 127–149].<sup>3</sup>
142. The Union of Judiciary Employees of Maranhão State (SINDJUS-MA) submitted further information in communications dated 31 July 2019 and 10 February 2020. The National Federation of State Judiciary Workers (FENAJUD) provided additional information in a communication dated 4 October 2019. The complainant organizations, including the Confederation of Public Servants of Brazil (CSPB), provided further information through a joint communication dated 10 September 2021.
143. The Government sent its observations in communications dated 30 September 2019, 21 February 2020 and 25 March 2020.
144. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

#### A. Previous examination of the case

145. In its previous examination of the case, the Committee made the following recommendations [see Report No. 389, para. 149]:
  - (a) With regard to the alleged lack of independence of the courts of Minas Gerais State that are examining the defamation cases against the Union of Judiciary Employees of Minas Gerais State (SERJUSMIG), the Committee requests the Government to report on the different options in terms of remedies available to that trade union organization with respect to the substance of the decisions handed down.
  - (b) Noting that, according to the information received, the defamation proceedings filed in 2015 against SERJUSMIG have so far given rise only to a preliminary decision, the Committee trusts

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<sup>3</sup> [Link to previous examination](#)



that the judicial proceedings under way will be completed as soon as possible and that the decisions by the Committee mentioned in the conclusions of this case will be duly taken into consideration. The Committee requests the Government to keep it informed in this respect.

- (c) Noting that it has not yet received the Government's reply on the administrative disciplinary proceedings that were allegedly brought against nine judiciary employees who participated in SERJUSMIG's campaign over wages, the Committee requests the Government to provide its observations in this regard as soon as possible.
- (d) Noting that the Government has not provided its observations on the allegations concerning the dispute between the Union of Judiciary Employees of Maranhão State (SINDJUS-MA) and the Judicial Authority of Maranhão State, the Committee requests the Government to send its reply in this regard as soon as possible.

## B. New information from the complainants

- 146.** In its communication of 4 October 2019, FENAJUD provides updated elements on the judicial and administrative disciplinary proceedings filed against the Union of Judiciary Employees of Minas Gerais State (SERJUSMIG). As regards the lawsuits filed by the Association of Minas Gerais Magistrates (AMAGIS) and the then president of the Court of Justice of Minas Gerais (TJMG) against SERJUSMIG, its then president and five judiciary employees of the Minas Gerais State, the complainant informs that settlements were reached and judicially homologated between July and October 2018. With regard to the administrative disciplinary proceedings, it indicates that, in view of the lapse of time, the statute of limitations was declared and, as a result, the employees were not punished. Therefore, the administrative proceedings against Jamilce Polliana Aguilar Silva, Dagma Geralda Batista, Ana Elisa Bittencourt Fonseca, André Rodrigues Damaceno, Luciene Peracci, Karina Kerley Porto, Josué Ribeiro Roberto, Darci Eduardo Dias and María Cristina Fonseca are now closed. In light of the above, the complainant, citing ethical and moral reasons and the fact that the conflict no longer exists, states that it is no longer necessary to proceed with the present case and requests its termination in view of the resolution of the conflict.
- 147.** In its communication of 31 July 2019, SINDJUS-MA refers to the dispute between the judiciary employees of Maranhão State and the Court of Justice of that State, in particular the salary deductions and the fine of 1.5 million Brazilian reais (BRL), which resulted from a strike that was declared illegal by the Court of Justice of Maranhão State. It requests that a conciliation hearing be provided, so that an agreement may be found on the salaries deductions and the penalty imposed on SINDJUS-MA due to strike movements may be terminated. In its second communication, of 10 February 2020, SINDJUS-MA emphasizes the urgency of the case as the survival of the union would be at stake and denounces the situation of serious vulnerability to anti-union conduct to which the workers would be exposed in Brazil.
- 148.** In a communication dated 10 September 2021, the complainant organizations submitted a court decision dated 6 April 2021 regarding an action brought by Anibal Lins, the then president of SINDJUS-MA, following public statements made against him by two magistrates of the Court of Justice of Maranhão State. The Court's decision requires the State of Maranhão to grant the union leader a right of reply proportionate to the harm suffered, the said right of reply having to take place in a plenary session of the court and be broadcast on web radio. The complainant organizations allege that this ruling demonstrates the hostility of the administration of justice representatives towards the trade union and its refusal to establish a dialogue with it.

### C. The Government's reply

- 149.** In its communication dated 30 September 2019, the Government refers to the allegations concerning the Judicial Authority of Minas Gerais State. It reiterates that the union activities of SERJUSMIG were considered by AMAGIS as causing collective moral damage to the magistrates, which justified the filing of lawsuits. The Government indicates that the fundamental issue of this case has already been brought to the attention of the judiciary branch, which, in turn, has the responsibility to decide on the issue. It points out that, based on the principle of separation of powers that guides the country's legal system, the Secretariat of Labour Relations, an agency engaged in the executive branch, has no competence to break with the country's constitutional structure by interfering in the acts of another branch.
- 150.** In its communication of 21 February 2020, the Government confirms that in Minas Gerais State, the parties entered into a transaction as to the object of the litigation. It also refers to the request of FENAJUD that the present case be terminated. The Government points out that not even in the administrative area was there any application of any penalty on the judiciary employees. According to the Government, it therefore cannot be disputed that the procedures relevant to the analysis of the cases are in full operation in Brazil, ruling out any misperception that the country is condoning anti-union practices.
- 151.** As regards the allegations concerning the situation occurring in Maranhão State, the Government emphasizes that the dispute was brought to the attention of the judiciary branch. Underlining again that a suitable conclusion was found between the parties in litigation in Minas Gerais State, it believes that the same can occur regarding the litigation related to the public employees of the State of Maranhão.
- 152.** In its communication dated 25 March 2020, the Government indicates that in the State of Maranhão, the salary deductions resulting from the strike days were upheld, even after the intermediary management of the National Council of Justice, where the judiciary employees proposed restituting the work hours lost in exchange for the suspension of the docking of the wages.

### D. The Committee's conclusions

- 153.** *The Committee recalls that the original complaint concerns two separate instances of alleged restrictions on freedom of association in the context of wage disputes in the judicial sector. It takes note of the additional information provided by the complainant organizations and the Government. As regards the allegations concerning the dispute between SERJUSMIG and the Judicial Authority of Minas Gerais, the Committee notes FENAJUD's indication that: (i) the lawsuits that were filed by AMAGIS and the then TJMG president against SERJUSMIG, its then president and five judiciary employees of the Minas Gerais State were settled between the parties; (ii) the administrative disciplinary proceedings against nine judiciary employees who participated in SERJUSMIG's campaign over wages were closed, as the statute of limitations was declared; and (iii) it is no longer necessary to proceed with the present case in view of the resolution of the conflict. The Committee also takes note that the Government indicates that: (i) the parties entered into a transaction as to the object of the litigation; (ii) FENAJUD requested that the present case be terminated; (iii) there was not an administrative penalty applied to the judiciary employees; and (iv) these developments prove that the procedures relevant to the analysis of the cases are in full operation in Brazil and that the country is not condoning any anti-union practices. Observing that the complainant and the Government both refer to a mutually agreed solution to the dispute that was found between the parties, the Committee will not pursue the examination of these allegations.*

154. Regarding the allegations concerning the dispute between SINDJUS-MA and the Judicial Authority of Maranhão State, the Committee recalls that, in its initial communications, SINDJUS-MA alleged that: (i) after having declared the illegality of a 2015 strike carried out by its own employees, the Court of Justice of the Maranhão State imposed a fine of BRL1.5 million (approximately US\$285,000), which threatens the survival of the union; (ii) without taking into consideration the solution proposed in May 2017 by the National Council of Justice, the supervisory body of the Brazilian judicial system, the Court of Justice refused to allow the work that was suspended during the strike to be fulfilled through additional compensatory hours of work and rather docked all pay corresponding to the duration of the strike; and (iii) the Court of Justice of Maranhão State engaged in anti-union acts and practices by refusing to receive union representatives and to enter into negotiations with the union in an attempt to discredit SINDJUS-MA as a representative of judiciary employees. The Committee notes that in its additional communications, SINDJUS-MA: (i) requested a conciliation hearing with a view to ensure the refund of the pay that was lost by the employees and the cancellation of the fine imposed on the union; (ii) emphasized the urgency of the case and the need to prevent the punishments imposed on the union and the judiciary employees of Maranhão State from becoming irreversible; and (iii) communicated a court ruling granting the then president of SINDJUS-MA a right of reply following public statements made against him by two magistrates of the Court of Justice of Maranhão State that would demonstrate the hostility of the administration of justice representatives towards the trade union. The Committee further notes that the Government: (i) states that the salary deductions resulting from the strike days were upheld; (ii) emphasizes that the dispute was brought to the attention of the judiciary branch; and (iii) believes that a similar agreement to the one that was reached between parties in litigation in Minas Gerais State can be achieved in the State of Maranhão.
155. The Committee recalls that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 942]. The Committee notes, however, that the Government has not provided information on the fine of BRL1.5 million that was imposed on SINDJUS-MA which would allegedly threaten the survival of the union. In this respect, the Committee recalls that it expects that any fines that could be imposed against trade unions for unlawful strikes will not be of an amount that is likely to lead to the dissolution of the union or to have an intimidating effect on trade unions and inhibit their legitimate trade union activities, and trusts that the Government would endeavour to resolve such situations by means of frank and genuine social dialogue [see **Compilation**, para. 969]. The Committee trusts that the Government will take the measures within its power to ensure that the fine imposed upon SINDJUS-MA by the Judicial Authority of Maranhão State does not threaten the very survival of the union and invites it to bring the parties together to review this matter.
156. The Committee also observes that the Government did not refer to the initial allegation that the Court of Justice of Maranhão State would engage in anti-union acts and practices by refusing to receive union representatives and refusing to enter into negotiations with the union. It recalls that both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence [see **Compilation**, para. 1329]. Noting the Government's indication that a similar agreement to the one that was reached in Minas Gerais State may be achieved in Maranhão State, the Committee trusts that the Government will seek to foster a climate of dialogue and trust between the parties with a view to reaching a negotiated agreement to end the dispute.

## The Committee's recommendations

**157.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee trusts that the Government will take the necessary measures in its power to ensure that the fine imposed upon the Union of Judiciary Employees of Maranhão State (SINDJUS-MA) by the Judicial Authority of Maranhão State does not threaten the very survival of the union, and that it will seek to foster a climate of dialogue and trust between the parties with a view to reaching a negotiated agreement to end the dispute.
- (b) The Committee considers that this case does not call for further examination and is closed.

Case No. 2318

Interim report

### Complaint against the Government of Cambodia presented by the International Trade Union Confederation (ITUC)

**Allegations: The murder of three trade union leaders and the continuing repression of trade unionists in the country**

**158.** The Committee has already examined the substance of this case (submitted in January 2004) on numerous occasions since June 2005, and most recently at its October 2019 meeting where it issued an interim report, approved by the Governing Body at its 337th Session [see 391st Report, paras 96–114].<sup>4</sup>

**159.** The Government sent its latest observations in a communication dated 31 January 2020.

**160.** Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

#### A. Previous examination of the case

**161.** In its previous examination of the case, the Committee made the following recommendations [see 391st Report, para. 114]:

- (a) The Committee expects that the Government will take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy, and that it will keep the Committee duly informed of any concrete action that the NCRILC may have taken to follow up on

<sup>4</sup> [Link to previous examination.](#)

these investigations to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice without further delay.

- (b) The Committee firmly urges the Government to ensure that an investigation into the allegations of torture and ill treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC, and requests the Government to keep it informed of the outcome of the investigation or any measure of redress provided for the wrongful imprisonment of those two men.
- (c) The Committee expects that the proceedings before the Court of Appeals with regard to the case of Thach Saveth will be concluded expeditiously and that the Government will keep it duly informed of developments in this regard.
- (d) The Committee must again express its firm expectation that the Government will take swift action in relation to all the outstanding matters in this case and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.
- (e) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

## B. The Government's reply

- 162.** In a communication dated 31 January 2020, the Government reports that the prosecution office of the Phnom Penh Court of First Instance has not received any further result of the investigation of the murder of trade union leader Chea Vichea.
- 163.** Regarding the case of the murder of trade union leader Ros Sovannareth, the Government informs that the Court of Appeals issued on 14 July 2019 a verdict in absentia by sentencing Mr Thach Saveth to 15 years of imprisonment for the premeditated murder, subject to appeal.
- 164.** The Government indicates, with regard to the murder of Hy Vuthy, that the case is still under the legal proceedings of the Phnom Penh Municipal Court.
- 165.** Finally, the Government adds that the National Commission on Reviewing the Application of International Labour Conventions Ratified by Cambodia (NCRILC) will further review these matters and address the cases in question during its annual meeting which was expected to be held early 2020. The Ministry of Labour and Vocational Training, acting as the secretariat of the NCRILC, intends to provide to the Committee updates on the cases upon receipt of a progress report from the competent authorities.

## C. The Committee's conclusions

- 166.** *The Committee recalls that it has considered this serious case on numerous occasions which relates, inter alia, to the murder of the trade union leaders, Chea Vichea (January 2004), Ros Sovannareth (May 2004) and Hy Vuthy (February 2007), and to the prevailing situation of impunity with regard to acts of violence against trade unionists.*
- 167.** *The Committee takes note from the succinct report of the Government the following information: (i) the prosecution office of the Phnom Penh Court of First Instance has not received any further result of the investigation on the murder of Chea Vichea; (ii) with regard to the murder of Hy Vuthy, the case is still under the legal proceedings of the Phnom Penh Municipal Court; (iii) in the case of the murder of Ros Sovannareth, the Government informs that the Court of Appeals issued on 14 July 2019 a verdict in absentia by sentencing Mr Thach*



*Saveth to 15 years of imprisonment for the premediated murder, subject to appeal; and (iv) the National Commission on Reviewing the Application of International Labour Conventions Ratified by Cambodia (NCRILC) will further review the cases during its annual meeting scheduled early 2020. The Ministry of Labour and Vocational Training, acting as the secretariat of the NCRILC, intends to provide to the Committee updates on the cases upon receipt of a progress report from the competent authorities.*

- 168.** *The Committee must once again express its deep concern over the evident lack of progress of the criminal investigations reported in the succinct report of the Government received in January 2020, and the absence of any updated information from the Government on the content of the discussion of the NCRILC, due to take place early 2020 according to the report, and on the status of the investigations or any decision eventually taken with the aim of concluding them. The Committee is bound to recall the need to conclude these investigations and to bring to justice the perpetrators and the instigators of these crimes in order to send an important message that any acts of violence against trade unionists will be punished and to prevent their recurrence. The Committee must also emphasize that the absence of proper investigation or concrete decision from the authorities creates a situation of impunity, which may reinforce the atmosphere of mistrust and insecurity, prejudicial to the exercise of trade union activities. Consequently, the Committee firmly urges the Government to take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea and Hy Vuthy, and to keep the Committee duly informed of any concrete action in this regard, including any measures that the NCRILC may have taken to follow up on these investigations to ensure that the perpetrators and the instigators of these crimes are brought to justice without further delay. In the case of the murder of Hy Vuthy, while noting that the case is still under legal proceedings before court, the Committee must again express its expectation that the Government will specify whether an order has been made to the judicial police to conduct a reinvestigation, given that the Government stated in 2017 that no order was made. The Committee urges the Government to provide follow-up information in this regard.*
- 169.** *Furthermore, the Committee recalls that for many years it had been referring to the situation of Thach Saveth, arrested and sentenced for 15 years of imprisonment in February 2005 for the premeditated murder of Ros Sovannareth in a trial characterized, in the Committee's view, by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists. Following the release of Thach Saveth on bail pursuant to the Decision of the Supreme Court ordering the review of the case, the Committee requested that justice be carried out and that Thach Saveth be able to exercise his right to a full appeal before the judicial authority. The Committee notes the information from the Government that the Court of Appeals issued on 14 July 2019 a verdict in absentia sentencing Thach Saveth to 15 years of imprisonment for the premediated murder, subject to appeal. The Committee, observing that the proceedings of the Court of Appeals went nearly nine years before its conclusion, urges the Government to provide a copy of the court decision sentencing Thach Saveth and to inform of developments following the Court of Appeals' decision, including any appeal filed against it. The Committee further urges the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and if so, to provide a copy of its outcome.*
- 170.** *Additionally, the Committee recalls that it previously referred to the allegations from Born Samnang and Sok Sam Oeun – who were wrongfully convicted for Chea Vichea's murder and definitely acquitted in September 2013 – of torture and ill treatment by the police while in detention. While it noted the Government's indication that all necessary legal support will be provided to them in case they decide to bring a formal complaint to court and have concrete*



evidence to support their case, the Committee recalled that in cases of alleged torture or ill treatment while in detention, governments should carry out independent inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 112]. It consequently urged the Government to ensure that an investigation into the allegations of torture and ill treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC, and requested the Government to keep it informed of the outcome of the investigation or any measure of redress provided for the wrongful imprisonment of those two men. In the absence of information from the Government, the Committee is bound to reiterate its recommendation and expects the Government to provide information on tangible results in this regard.

- 171.** In conclusion, the Committee recalls that it previously noted the Government's indication that, in July 2018, the NCRILC endorsed a road map on the implementation of the ILO's recommendations concerning freedom of association which specifies, inter alia, time-bound actions aimed at providing conclusions to the pending investigations of the murder cases and that progress reports from designated institutions in charge would be regularly discussed by the NCRILC. In view of the absence of any information on the review by the NCRILC of the cases, or any progress report in this regard, the Committee must express its deep concern over the absence of tangible developments concerning all the long-standing issues under examination in this case. The Committee must again express its firm expectation that the Government will take swift action in this regard and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country. Consequently, the Committee must once again draw the Governing Body's attention to the extremely serious and urgent nature of this case.

## The Committee's recommendations

- 172.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee firmly urges the Government to take all necessary measures to expedite the process of investigation into the murders of trade union leaders Chea Vichea and Hy Vuthy, and that it will keep the Committee duly informed of any concrete action in this regard, including any measures that the NCRILC may have taken to follow up on these investigations to ensure that the perpetrators and the instigators of these crimes are brought to justice without further delay. In the case of the murder of Hy Vuthy, the Committee urges the Government to specify whether an order has been made to the judicial police to conduct a reinvestigation.
  - (b) The Committee urges the Government to provide a copy of the decision of the Court of Appeals sentencing Thach Saveth and to inform of developments following the court decision, including any appeal filed against it. The Committee further urges the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and if so, to provide a copy of its outcome.
  - (c) In the absence of information, the Committee again firmly urges the Government to ensure that an investigation into the allegations of torture and

ill treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC. It firmly urges the Government to provide tangible information on the outcome of the investigation and on measure of redress provided for the wrongful imprisonment of those two men.

- (d) The Committee must express its deep concern over the absence of tangible developments concerning all the long-standing issues under examination in this case. The Committee must again express its firm expectation that the Government will take swift action in this regard and will be able to report on meaningful progress, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.
- (e) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

Case No. 3361

Definitive report

**Complaint against the Government of Chile**

**presented by**

**the Lan Express Cabin Crew Union – LATAM Chile (STCLE)**

**supported by**

**– the International Transport Workers' Federation (ITF)**

**– the Single Central Organization of Workers of Chile (CUT)**

**Allegations: Anti-union discrimination in a collective bargaining process by rejecting as illegal the complainant organization's decision to end a strike and accept the employer's final offer**

- 173. The complaint is contained in communications dated February 2019 (received 28 March 2019) and 7 February 2020 from the Lan Express Cabin Crew Union – LATAM Chile (STCLE), supported by the International Transport Workers' Federation (ITF) and the Single Central Organization of Workers of Chile (CUT).
- 174. The Government sent its observations in communications dated 12 March and 3 August 2021.
- 175. Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## **A. The complainant's allegations**

- 176. The complainant alleges that, in a collective bargaining process, Transporte Aéreo SA or Lan Express (hereinafter the enterprise) was guilty of anti-union discrimination by rejecting as illegal the complainant's decision to end a strike and to accept the enterprise's final offer.

177. The complainant states that: (i) on 14 February 2018, the STCLE launched a collective bargaining process, with the enterprise giving its response on 24 February 2018; (ii) a legal dispute arose over a clause in the contract – which the enterprise wanted to remove – establishing that any worker who joins the union will become a beneficiary of the collective instrument, a dispute in which the Labour Directorate and the courts ruled in favour of the union; (iii) round table negotiations began, which were unsuccessful and, after the deadlines had passed, the enterprise made its final offer on 23 March 2018 (an offer that was neither withdrawn nor revoked by the enterprise); (iv) after unsuccessful mediation by the labour inspectorate, the strike began on 10 April 2018; (v) at that stage the enterprise made a new offer, which was not accepted by the union’s assembly; (vi) on 23 April 2018, the enterprise began a campaign to encourage the striking workers to halt their action, with the aim of breaking up the union and excluding them from the bargaining process; (vii) against this background, the enterprise refused to meet with the union’s negotiating committee and only undertook to promote the individual reinstatement of workers; (viii) given the time that had elapsed and the intransigence of the enterprise, the STCLE’s assembly decided to accept the enterprise’s final offer and end the strike – the enterprise and the labour inspectorate were informed of this on 25 April 2018; (ix) on 26 April the enterprise issued a statement indicating that “unfortunately the way in which the union reportedly ended the strike does not comply with current legislation, which is why the enterprise is consulting with the Labour Directorate to obtain a ruling on the legality of the union’s actions” and specifying that, in the meantime, the enterprise could not consider the strike to be over; (x) the head of the Labour Directorate, in response to the enterprise’s request, summoned the parties on 27 April and informed the union that the enterprise’s submission would be forwarded so that it could give its opinion; (xi) however, without waiting to hear the union’s arguments, in the afternoon of the same day official communication No. 2044 was issued on 27 April 2018, signed by the head of the Labour Directorate’s legal department, which stated that, as the union’s assembly had rejected the enterprise’s final offer, the union had not complied with the requirement to end the strike and consequently its action was illegal and the strike should be considered as still ongoing. This administrative decision underscored that, under the Labour Code, the main legal modalities for ending regulated collective bargaining are the signing of the collective agreement by both parties and the right to each worker’s individual reinstatement during the strike under the terms and conditions of the employer’s final offer; and (xii) through this action, the administrative authority, in failing to respect due process, interfered in collective bargaining, by ruling that, although the union had decided to end the strike, the strike continued (which, the complainant asserts, was in the enterprise’s interest).
178. The complainant indicates that the administrative authority’s ruling forced the union to bring the case before the courts: (i) proceedings for constitutional protection (*amparo*) were filed against the Labour Directorate (which was rejected by the Court of Appeal on 4 July 2018, a decision upheld by the Supreme Court, on a matter of form – it was considered that the protection should be given by the labour judge); (ii) in this regard, an application was filed for a labour judge to rule on the legality of the decision to end the strike and sign the enterprise’s final offer and, on 25 September 2018, the First Chamber of the Santiago Labour Court rejected the application, carrying out a grammatical analysis of the legislation, considering that there was no express rule authorizing a union to accept the enterprise’s final offer once the strike was approved – this ruling was subject to an appeal for annulment before the Santiago Court of Appeal; and (iii) in these circumstances, the contested administrative act remained in force, meaning that the strike could not be ended (the union instructed the unionized workers

to return to work in order to avoid serious financial losses. However, three union leaders have remained on strike, without pay (for nine months as of the date the complaint was filed), with a consequent loss of health coverage due to outstanding payments owed to the private insurance company, as well as problems in carrying out their union activities because the enterprise has made it difficult for them to access their usual workplaces to meet with union members.

- 179.** The complainant considers that the enterprise's actions and the contested administrative decision hinder the collective bargaining process and effectively prevent the unions from exercising their right to strike. It considers that these are discriminatory anti-union acts that favour individual bargaining (for a small group of workers because they stopped striking earlier and for whom, in the enterprise's view, the final offer had not expired) over collective bargaining (the enterprise did not allow the union to accept the final offer, nor did it offer the terms and conditions of the offer to the unionized workers who ended the strike later). The complainant therefore considers that the authority's actions in support of the enterprise's position ran counter to the State's obligation to encourage collective bargaining. The complainant requests that its right to oppose the end of the strike be recognized, that the alleged actions be determined as anti-union practices, and that the three union leaders who were forced to remain on strike be reinstated and receive their unpaid wages.

## B. The Government's reply

- 180.** In a communication dated 12 March 2021, the Government sent in response the observations of the head of the Labour Directorate, who indicates that: (i) the complaint is related to an application for a declaratory judgment filed by the complainant against the enterprise in order to determine that the end of the strike called by the union on 25 April 2018 was legal; (ii) the First Chamber of the Santiago Labour Court rejected the application when hearing the case; (iii) however, on 2 July 2019, the Santiago Court of Appeal annulled the contested ruling and issued a replacement ruling accepting the application; (iv) subsequently, the enterprise filed an appeal for unification of jurisprudence on 19 July 2019 before the Supreme Court; (v) these proceedings were suspended due to the filing of an application for unconstitutionality of sections 357 and 258 of the Labour Code – an action that was rejected by the Constitutional Court in a ruling dated 2 March 2020; and (vi) the suspended proceedings were resumed, and on 27 April 2020, the Supreme Court issued a ruling declaring the appeal for unification of jurisprudence filed by the enterprise inadmissible. It should also be noted that the Labour Directorate was not a party to the aforementioned legal proceedings.
- 181.** The Court of Appeal's ruling, which therefore resolved the matter, ruled in favour of the complainant union and established that: (i) the end of the strike agreed by the union on 25 April 2018 is legal; and (ii) the employer's final offer was in force at the time it was signed by the complainant union, meaning that it constitutes the collective instrument applicable to the parties between 1 April 2018 and 31 March 2021. This means that it is also applicable to the workers who were reinstated individually (stopped striking), given that, as a result, such reinstatement was not in accordance with the law. The Court of Appeal noted that it can only be concluded that, as strike action is a legal remedy available to workers, the sole holder of this right is, in this case, the union. The decision to end the strike and return to work therefore always falls to the union. The Court also concluded that it can be considered that existing legislation (Act No. 20.940) grants unions the exercise of the right to strike and what that entails, including ending a strike under the regulated procedure. The Court also considered in its opinion that the entire

collective bargaining process relies on the contracting parties acting in good faith and that the bedrock of this type of procedure presupposes that its participants avoid any conduct that would hinder their mutual understanding, with a view to a fair and peaceful solution. Against this background, the Court considered that collective autonomy should prevail. Such autonomy was evident in the employer's proposal (final offer), which cannot be deemed to have precluded or lost its validity, given that the workers who decided to return to work individually adhered to its terms and conditions and the workers' negotiating committee expressed their agreement to them in order to end the strike. The Court of Appeal found that concluding the collective process through such agreement was consistent with an interpretation underpinning the collective agreement as an expression of freedom of association and that the concurrence of wills over the final offer was conducive to the resolution of the dispute and reinforced union and collective autonomy.

182. By means of a communication dated 3 August 2021, the Government indicates that the main issue that gave rise to the complaint has been resolved within the framework of the country's institutions and that it has no additional information to add.

### C. The Committee's conclusions

183. *The Committee notes that the complainant alleges that, in a collective bargaining process, the enterprise was guilty of anti-union discrimination by rejecting as illegal the complainant's decision to end a strike and to accept the enterprise's final offer. The complainant claims that the union's right to end the strike should be recognized, and that the three union leaders who remained on strike following the enterprise's rejection should be reinstated and their lost wages paid.*
184. *The Committee notes that, following the filing of the complaint, the courts of law ruled on the case in favour of the complainant union, finding that: (i) the ending of the strike agreed by the union on 25 April 2018 was legal; and (ii) the employer's final offer was in force at the time it was signed by the complainant union, so that it constitutes the applicable collective instrument.*
185. *The Committee notes that, in ruling on the issue, the deciding court – the Court of Appeal – found that, as strike action is a legal remedy available to workers, the sole holder of this right is, in this case, the trade union. The decision to end the strike and return to work therefore always falls to the union. The Committee also notes that the Court of Appeal also found that concluding the collective process through such agreement was consistent with an interpretation underpinning the collective agreement as an expression of freedom of association and that the concurrence of wills over the final offer was conducive to the resolution of the dispute and reinforced union and collective autonomy.*
186. *The Committee takes due note of the of the Court of Appeal's ruling and notes that the right of workers' organizations to organize their activities must include the possibility of deciding to end collective actions that they have initiated.*
187. *Furthermore, the Committee notes that the information provided does not specify whether the three union leaders who remained on strike following the enterprise's decision not to accept the end of the strike by the trade union had been reinstated and whether the wages they had not been paid had been reimbursed. The Committee trusts that this was the case.*

## The Committee's recommendations

**188.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

- (a) The Committee trusts that the three union leaders who had remained on strike following the enterprise's decision not to accept the end of the strike by the trade union were reinstated and the wages they had not been paid were reimbursed.
- (b) The Committee considers that this case does not call for further examination and is closed.

Case No. 3133

Definitive report

### Complaint against the Government of Colombia presented by the National Union of Workers in the Production, Distribution and Consumption of Food, Beverages and other services provided in Clubs, Hotels, Restaurants and Similar of Colombia (HOCAR)

**Allegations: The complainant organization denounces the judicial revocation of the trade union registration of the Sopó branch of the HOCAR trade union following systematic anti-union acts by the Golf and Tennis Country Club. The complainant organization also denounces the enterprise's refusal to bargain collectively with the branch in question**

**189.** The complaint is contained in a communication dated 3 June 2015 submitted by the National Union of Workers in the Production, Distribution and Consumption of Food, Beverages and other services provided in Clubs, Hotels, Restaurants and Similar of Colombia (HOCAR).

**190.** The Government of Colombia transmitted its observations on the allegations in communications dated 16 May 2016 and 8 May 2019.

**191.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

#### A. The complainant's allegations

**192.** In its communication dated 3 June 2015, the HOCAR trade union alleges that the Golf and Tennis Country Club (hereinafter "the enterprise") committed a number of



anti-union acts with the aim of removing its branch established in the municipality of Sopó (hereinafter “the branch”), and that the decision of the High Court of the Judicial District of Cundinamarca to revoke the trade union registration of the branch in question, and the enterprise’s refusal to bargain collectively, violate Conventions Nos 87, 98 and 154.

- 193.** The complainant organization states that it is an industrial trade union with over 4,000 members throughout the country and that it is affiliated to the General Confederation of Labour (CGT). It states that on 9 November 2009, workers employed by the enterprise met in Sopó, in the department of Cundinamarca, and 27 of them signed the minutes of the meeting that established the branch.
- 194.** According to the complainant organization, since the branch was established the enterprise has been carrying out premeditated and systematic anti-union acts targeting its members and officials. It maintains that the enterprise, in bad faith, put a number of obstacles in the way of the list of demands it submitted on 9 November 2012. The complainant organization states that as the list of demands was not resolved in the direct settlement phase an arbitration tribunal was set up to resolve it, which issued an arbitration award on 26 May 2014. It states that the enterprise lodged an extraordinary appeal to annul the arbitration award, proceedings that are pending before the Labour Appeals Chamber of the Supreme Court of Justice.
- 195.** The complainant organization states that since the submission of the list of demands, the enterprise has done all it can to destroy the branch, leading to resignations by its members as a result of threats, handouts and promises that constitute anti-union conduct that is prohibited and punishable under Act No. 27 of 1976, section 354 of the Substantive Labour Code (CST) and section 200 of the Penal Code.
- 196.** The complainant organization also states that, in a letter dated 17 February 2015, the chief of human resources of the enterprise informed the workers affiliated to the HOCAR trade union that the trade union organization had ceased to exist legally and consequently it could not continue to operate except solely and exclusively for the purposes of its liquidation and dissolution.
- 197.** The complainant organization states that the enterprise brought two legal actions seeking the dissolution, liquidation and revocation of the legal personality of the branch on the grounds that the number of members of the branch was lower than the minimum required under the CST. It states that the first claim was decided in favour of the branch in a judgment dated 27 November 2014 handed down by the Single Labour Judge of the Girardot Circuit and that this ruling was not appealed.
- 198.** The complainant organization explains that the second claim, which again sought the dissolution of the branch, was decided in its favour on 19 March 2015 by the Single Labour Judge of the Circuit of Girardot, but the enterprise appealed against this ruling. It claims that, in the second instance, the High Court of the Judicial District of Cundinamarca, in a judgment dated 4 May 2015, and in a strangely expeditious manner, overturned the court’s judgment and in its place ordered the revocation of the trade union registration of the branch.
- 199.** According to the complainant organization, the judgment dated 4 May 2015 is manifestly contrary to Colombian labour law, among other reasons because the dissolution and revocation of trade union registration can only apply to trade unions, federations and confederations in accordance with section 401 of the CST and under no circumstances to industry trade unions like the HOCAR trade union. Moreover, it considers that the

judgment fails to recognize the right of workers to establish and join organizations of their own choosing.

- 200.** With regard to the composition of the branch, the complainant organization reports that the judgment dated 4 May 2015 uses a statement made before an arbitration tribunal and taken out of context to establish that the branch went from having 30 to 13 workers.
- 201.** The complainant organization also states that this judgment does not take account of the fact that when the trade union submitted the list of demands and during the collective dispute, the enterprise punished the trade union officials, dismissed one member and pressured 16 workers into leaving the trade union. The complainant organization states that the decision deems the passages of the arbitration award of 26 May 2014 that are unfavourable to the branch to be conclusive evidence, but disregards the serious allegations of trade union persecution of its officials and members.
- 202.** According to the complainant organization, Convention No. 98 and the right to protection against anti-union discrimination have also been violated. In particular, it states that the enterprise makes continuity in employment conditional on the worker not joining the trade union or on leaving it, and that it penalizes some workers because of their union membership, misusing the “ius variandi” and changing the conditions to disadvantage the worker.
- 203.** The complainant organization also states that Convention No. 154 and Act No. 411/1997 are also constantly being violated by the enterprise, which refuses to find peaceful solutions to disputes that arise in relation to the determination of unionized workers’ terms and conditions of employment and which conducts internal disciplinary proceedings that are not independent and impartial using unqualified individuals, the outcome of which is predetermined, systematically violating the right to defence and to due process by accusing and judging without evidence.
- 204.** In this respect, the complainant organization specifically alleges that the enterprise: (i) initiated unfounded disciplinary proceedings against the members and officials of the branch, including Mr Juan Domingo Casas, who was dismissed, and Mr Ricaute Ortiz, Ms Adriana Ballen and Mr Carlos Augusto Segura, who were suspended for 3, 8 and 60 days, respectively; (ii) denied the branch’s members the right to object to the internal workplace rules; (iii) sent communications to recently unionized members reproaching them for lawfully exercising their trade union membership; (iv) failed to make timely contributions to the pension fund of Ms Helena Prieto and required her to leave the union as a condition for it to make the contributions to the pension fund that she was due (over three years’ worth of contributions); and (v) denied its members the right to wage mobility for two years and five months, while it increased the wages of two workers three months after they left the union.
- 205.** The complainant organization indicates that, in view of the acts of trade union persecution mentioned, the unionized workers lodged administrative complaints with the labour inspectorate in the city of Zipaquirá on 28 May 2013 (file No. 232-139) and with the Ministry of Labour (Territorial Directorate of Cundinamarca) on 3 September 2013. It also indicates that on 13 May 2013 a criminal complaint was submitted against the enterprise to the Public Prosecutor’s Office (No. 0142123), for acts undermining the right to freedom of association. The complainant organization states that to date it has not had any results in relation to the above actions.
- 206.** The complainant organization states that the workers and officials in the branch exhausted all the administrative and judicial channels in Colombia, without obtaining a

favourable decision or judgment to restore its right to freedom of association. It states that in Colombia there are no adequate administrative or judicial remedies against acts of anti-union discrimination and that this is leading to the disappearance of workers' organizations.

## B. The Government's reply

- 207.** In its communication dated 16 May 2016, the Government submitted the enterprise's reply, which underlines that at the present time the trade union HOCAR does not represent any of its workers, including those that previously belonged to the branch, and that consequently the complainant organization may neither lodge a complaint nor mention any alleged violations of freedom of association, the right to organize and collective bargaining in particular.
- 208.** Regarding the list of demands submitted by the complainant organization, the enterprise denies the allegations and indicates that it has never acted in bad faith and that it would be difficult to put obstacles in the way of a list of demands that was drawn up directly by the members of the trade union organization and that was discussed by the officials of the trade union organization and the negotiating committee that the enterprise appointed in accordance with the terms and stages stipulated in labour law.
- 209.** The enterprise also refutes the allegations of anti-union conduct that allegedly led to members leaving the branch and denounces the numerous complaints lodged by the trade union organization before the administrative authorities, all of them reckless and not backed up by any evidence.
- 210.** With regard to the letter dated 17 February 2015 sent by its chief of human resources, the enterprise indicates that it is true that using a variety of means the officials of the trade union organization were informed that, in accordance with section 359 of the CST, which establishes the minimum number of members that all trade union organizations in Colombia must have, the branch had fewer than 25 affiliated workers, which was why it could not continue to exist and that its sole function was to proceed with its liquidation and dissolution.
- 211.** The enterprise also states that it is true that the High Court of Cundinamarca revoked the judgment handed down in first instance, which had disregarded Colombian legal provisions in respect of the minimum number of members that a trade union organization in Colombia should have, and which had not taken due account of the evidence submitted by the enterprise. Instead, the judgment handed down in second instance ordered, in accordance with the law, the revocation of the trade union registration of the branch of the HOCAR trade union.
- 212.** With respect to the allegations that it punished the trade union officials, dismissed one member and pressured 16 workers into leaving the trade union, the enterprise states that these are merely subjective views of the complainant organization, not only reckless but also wrong, as the enterprise neither punished nor dismissed any worker unjustly. The enterprise maintains that all the disciplinary proceedings it has initiated against its workers have been fully compliant with all legal and constitutional requirements in accordance with due process. It states that if some workers left the trade union it was as a result of the bad policies and appalling union guidance it instilled in its affiliated workers and that as they did not agree with the guidance given, those members decided freely and voluntarily to leave the trade union organization. With respect to the allegations concerning complaints of trade union persecution, the enterprise also maintains that it would have been difficult for the second instance judge to rule on

matters entirely unknown to him and that had nothing to do with the claim that the enterprise brought against the trade union organization for the revocation of the trade union registration of the branch. With regard to the composition of the branch, the enterprise indicates that the judgment of 4 May 2015 did not accept any statement taken out of context and concluded in effect that there were 13 workers in the trade union organization, and that consequently it could not legally exist.

- 213.** With respect to the allegation relating to the case of Ms Prieto, the enterprise states that it is a claim by the complainant organization concerning a person with whom it has no legitimate connection, based on entirely non-existent facts that are wholly untrue. It states that to date it has received no complaints, either verbally or in writing, from Ms Prieto concerning contributions for the recognition of her pension.
- 214.** The enterprise also indicates, regarding the alleged denial of the right to wage mobility for union members, that if the wages of unionized workers have not been raised, this is due to the fact that the trade union organization opted to submit the collective dispute to an arbitration tribunal and that at the present time it is being heard by the Supreme Court of Justice.
- 215.** After communicating the position of the enterprise, the Government provides its own observations about the complaint. The Government refers first to the action of the labour inspectorate of Zapaquirá, which: (i) on 28 May 2013 received a complaint from Ms Ballen, branch president, for alleged violation of the right to equality, alleged trade union persecution and alleged violation of the collective agreement (file No. 232-139); (ii) on 7 January 2015 received a complaint from Mr Manuel Bayona Espinosa, president of the HOCAR trade union, for alleged anti-union conduct (file No. 25-273); (iii) on 18 June 2015 combined the two complaints at the request of the complainants; (iv) on 26 May 2015 received a complaint from Mr David Polo Aguas, official of the HOCAR trade union, for alleged anti-union conduct (file No. 359-313), and responded to the complainant, requesting him to appear in the five working days following receipt in order to be notified of the decision to initiate an administrative preliminary investigation, but he did not come forward; and (v) received further complaints from Ms Ballen, on 28 April 2015 for alleged trade union persecution (file No. 263-301) and on 12 May 2015 for alleged workplace harassment (file No. 317-307). The Government supplements this information in its communication dated 8 May 2019, indicating that: (i) with regard to file No. 232-139, the enterprise was absolved and the administrative process was closed on 10 October 2018; (ii) with respect to file No. 263-301, the administrative investigation was closed on 9 October 2018 as there were no grounds for the initiation of administrative disciplinary proceedings against the enterprise; and (iii) with respect to file No. 317-307, the investigation was not pursued given that the complainant indicated on 14 October 2015 that he had ended his contract with the enterprise by mutual agreement and that he had no interest in pursuing the complaint.
- 216.** With regard to the extraordinary appeal lodged by the enterprise to annul the arbitration award, the Government, referring to the pronouncement by the Constitutional Court in judgment T-248 of 2014, indicates that protection of the right to collective bargaining does not imply per se reaching an agreement or obliging either of the parties to accept conditions that they do not agree with; what the Constitution seeks is to ensure that the corresponding conversations can go ahead. According to the Government, there was no violation of collective bargaining, and certainly no refusal by the enterprise to negotiate, given that all the stages of a collective bargaining process established by law in sections 433 and 434 of the CST were adhered to, right up to the arbitration award. It states that

while it is true that the enterprise made use of its right to lodge an extraordinary appeal for annulment, it does not mean that it is violating Conventions Nos 98 and 154.

- 217.** Furthermore, regarding the alleged anti-union conduct by the enterprise that allegedly led to members leaving the branch, the Government indicates that the copies of the resignations provided by the complainant organization show that they were carried out in a voluntary manner by the members and that they occurred between 2009 and 2013, and that no other evidence is provided as proof of coercion, pressure or any type of conduct by the enterprise that gave rise to the resignations mentioned. The Government states that freedom of association is both the freedom to be a member and the freedom not to be a member of a trade union, and that if this were not the case the very right of association would be meaningless.
- 218.** With respect to the judgment of 4 May 2015, the Government refers to section 391-1 of the CST, which stipulates that any trade union can provide in its statutes for the establishment of sectional branches with no fewer than 25 members. Basing itself again on the case law of the Constitutional Court, the Government indicates that the enterprise was able to go to the ordinary courts to request the dissolution of the branch, and that in doing so it was not violating trade union rights, as the right of workers to belong to a trade union was not being restricted, given that the disappearance of the branch does not mean that they stop belonging to the trade union, in this case the HOCAR trade union.
- 219.** The Government also states that the High Court of the Judicial District of Cundinamarca is not restricting the right of association, it is simply exercising one of its functions, which is to rule on appeals lodged by the circuit labour courts. The Government indicates that the decisions taken in this case have been adopted in keeping with judicial processes in compliance with the requirements established in the Constitution and in the law.
- 220.** The Government states, furthermore, that it has taken all necessary action when called upon to do so in order to protect trade union rights through inspection and monitoring actions, and administrative investigations. Therefore it requests the Committee to invite the Governing Body not to pursue its examination of this matter.

## C. The Committee's conclusions

- 221.** *The Committee observes that in the present case the complainant alleges: (i) systematic anti-union acts by the enterprise with the aim of removing one of its sectional branches, and the failure to take these acts into account in the decision of the High Court of the Judicial District of Cundinamarca to revoke the trade union registration of the branch; and (ii) the enterprise's refusal to bargain collectively.*
- 222.** *The Committee notes the chronology of events provided by both the complainant organization and the Government, namely: on 9 November 2009, 27 of the enterprise's workers established the branch being considered in this case. Between 2009 and 2013, several workers affiliated to the branch resigned from the union. On 9 November 2012, the complainant organization submitted a list of demands that was not resolved in the direct settlement phase. In 2013, the unionized workers lodged various administrative complaints for trade union persecution with the labour inspectorate, and also a criminal complaint before the Public Prosecutor's Office for acts undermining the right to freedom of association. An arbitration tribunal was set up to resolve the list of demands and it issued an arbitration award on 26 May 2014. The enterprise brought two legal actions seeking the dissolution, liquidation and revocation of the legal personality of the branch, alleging that the branch did not have the minimum number of affiliated workers established by law. On 27 November 2014, the first claim was decided in*



*favour of the complainant organization and this ruling was not appealed. On 19 March 2015, the second claim was decided in favour of the complainant organization and the enterprise appealed against this ruling. On 4 May 2015, the High Court of the Judicial District of Cundinamarca overturned the first-instance judgment and in its place ordered the revocation of the trade union registration of the branch. In 2015, three further complaints were submitted by workers affiliated to the complainant organization. Between 2015 and 2018, two of the complaints submitted to the labour inspectorate were closed and one was not pursued.*

- 223.** *Regarding the alleged anti-union acts committed by the enterprise, the Committee notes that, according to the complainant organization, the enterprise caused 16 workers to leave the union through a series of suggestions, pressure and threats which, inter alia, allegedly included: (i) misusing the “ius variandi” and changing the working conditions of affiliated workers; (ii) unfounded disciplinary proceedings and punishments directed at members and officials of the branch, including the dismissal of Mr Juan Domingo Casas; (iii) the failure to make contributions to the pension fund of Ms Helena Prieto until she left the trade union; and (iv) denying the members of the union the right to wage mobility. Regarding the judgment of the High Court of the Judicial District of Cundinamarca of 4 May 2015, which overturned the first-instance decision and ordered the revocation of the registration of the branch due to not complying with the minimum number of registered workers stipulated in the CST, the Committee notes that the complainant organization alleges that: (i) on the basis of a statement taken out of context (a document from the arbitration tribunal) the judgment established that the composition of the branch went from 30 to 13 workers; and (ii) it was not taken into account that the enterprise punished the trade union officials, unjustly dismissed one member and pressured 16 workers into leaving the trade union.*
- 224.** *The Committee notes, furthermore, the reply from the enterprise sent by the Government, in which it categorically denies committing any anti-union acts and states in particular that: (i) the numerous complaints lodged by the trade union before the administrative authorities are based on false accusations, are reckless and are not backed up by any evidence; (ii) members’ resignations are the result of appalling guidance by the trade union organization, which, today, no longer represents any workers at the enterprise; (iii) the enterprise neither punished nor dismissed any worker unjustly and all the disciplinary proceedings it has initiated have been fully compliant with all legal and constitutional requirements; (iv) it denies the allegations regarding Ms Prieto, and is unaware of any complaint relating to her; and (v) the wages of the unionized workers have not been increased because the trade union organization submitted the collective dispute to an arbitration tribunal, whose award was challenged before the Supreme Court of Justice. With regard to the judicial revocation of the registration of the branch, the Committee notes the enterprise’s statement that the judgment, based on the evidence, concluded that there were 13 workers in the trade union organization and that it could not legally exist.*
- 225.** *The Committee also notes that the Government indicates that: (i) the labour inspectorate took all necessary action when asked to intervene; (ii) the members voluntarily left the union, with there being no evidence of coercion, pressure or any type of conduct by the enterprise that gave rise to the resignations; (iii) the enterprise was able to go to the ordinary courts to request the dissolution of the branch without this constituting a violation of the right of the workers to belong to the HOCAR trade union; and (iv) the judgments handed down by the judicial authority in this case complied with all the requirements established in the Constitution and in the law.*
- 226.** *The Committee notes the various elements provided by the parties. It notes that the first allegation of the case relates to the judicial dissolution of a branch of the complainant*



organization due to it no longer having the minimum number of members indicated in the CST. The Committee notes the allegation by the trade union organization that the reduction in the number of members is the consequence of a series of pressures and anti-union acts carried out by the enterprise, elements that were not taken into consideration by the court of second instance in its decision, while the enterprise and the Government deny the existence of anti-union acts and stress the validity of the judicial judgment of dissolution.

227. The Committee recalls that in a case in which it concluded that the reduction in the number of union members to below the legal minimum of 25 was the consequence of anti-trade union dismissals or threats, the Committee requested the Government, should it be concluded that these were anti-trade union dismissals and that the withdrawal from union membership of trade union leaders resulted from pressure or threats from the employer, to impose the penalties provided by the legislation, reinstate the dismissed workers in their jobs and permit the dissolved trade union to be reconstituted [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 985]. The Committee notes that in the present case several administrative complaints regarding anti-union acts were submitted to the labour inspectorate by workers affiliated to the complainant organization, two of which were closed by the labour inspectorate and one was discontinued by the complainant after the end of her contract with the enterprise. The Committee observes at the same time that no specific information has been provided about the results of the criminal complaint for acts undermining the right to freedom of association before the Public Prosecutor's Office and the administrative complaint for trade union persecution before the Ministry of Labour, submitted by unionized workers from the enterprise on 13 May and 3 September 2013, respectively.
228. Recalling that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Compilation**, para. 1159], the Committee therefore trusts that the Government will ensure that the totality of the administrative and criminal complaints relating to the present case have been duly examined in good time by the authorities with a view to ensuring full respect for freedom of association at the enterprise concerned.
229. With regard to the allegations relating to the enterprise's refusal to bargain collectively, the Committee notes that the complainant organization maintains that the enterprise acted in bad faith, putting a number of obstacles in the way of its list of demands, refusing to accept the award issued by the arbitration tribunal. The Committee notes, furthermore, that the enterprise and the Government take the same position, that they deny the allegations and that they state that the list of demands was discussed by the complainant organization and the negotiating committee appointed by the enterprise and that all the stages of a collective bargaining process stipulated in the CST were adhered to. The Committee notes that an arbitration award was issued on 26 May 2014 and that the enterprise lodged an extraordinary appeal to annul the arbitration award with the Supreme Court of Justice, which is still pending. In this respect, the Committee takes special note of the indication by the enterprise that no change can be made to the unionized workers' wages until the Supreme Court hands down its judgment. The Committee regrets the excessive delay in the process and the protracted impossibility for the unionized workers to be able to benefit from wage increases. The Committee observes that the situation described in this case could have a dissuasive impact on the exercise of freedom of association. Furthermore, the Committee emphasizes the importance of having effective mechanisms for the voluntary resolution of collective disputes in order to effectively promote collective bargaining. The Committee therefore trusts that the Supreme Court of Justice will very soon rule on this appeal.

## The Committee's recommendations

**230.** In the light of its foregoing conclusions, which do not call for further examination, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee trusts the Government will ensure that the totality of the administrative and criminal complaints relating to the present case have been duly examined in good time by the authorities with a view to ensuring full respect for freedom of association at the enterprise concerned.
- (b) The Committee trusts that the Supreme Court of Justice will very soon rule on the appeal lodged by the enterprise to annul the arbitration award of 26 May 2014 and that the Public Prosecutor's Office will clarify shortly the status of the complaint filed with it.
- (c) The Committee considers that this case does not call for further examination and is closed.

Case No. 3354

Definitive report

**Complaint against the Government of Costa Rica  
presented by**

- the Confederation of Workers Rerum Novarum (CTRN)
- the National Federation of Agro-industry, Hotel and Catering and Allied Workers (FENTRAGH) and
- the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tourism, Tobacco and Allied Workers' Associations (IUF/UITA)

**Allegations: The complainant organizations allege mass dismissals, including of union leaders, and the revocation of collective bargaining agreements in two multinational enterprises in the agro-industrial sector. They also allege a lack of effective protection by the State**

**231.** The complaint is contained in a joint communication from the Confederation of Workers Rerum Novarum (CTRN), the National Federation of Agro-industry, Hotel and Catering and Allied Workers (FENTRAGH) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tourism, Tobacco and Allied Workers' Associations (IUF/UITA) , dated 18 March 2019.

**232.** The Government sent its observations in communications dated 19 December 2019 and 6 October 2021.

233. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

## A. The complainant's allegations

234. In their communication dated 8 March 2019, the complainants allege that the changes that have taken place since 1 March 2019, with the opening of the new container terminal in Moín, in the province of Limón, operated under a concession by a multinational port company, have led to two multinational enterprises in the agro-industrial sector (Standard Fruit Company de Costa Rica, S.A. (hereinafter enterprise A) and Chiquita Brands Costa Rica S.R.L. (hereinafter enterprise B) carrying out mass, illegal dismissals of workers. The complainants allege, more specifically, that these enterprises abruptly closed port operation work sites located in the province of Limón, leading to the dismissal of workers and union representatives of the following unions: the Free Industrial Union of Banana and Allied Workers of Costa Rica (SINTRACOBAL); the Industrial Union of Agricultural and Allied Workers (SINTRAGA); and the Industrial Union of Agricultural, Agricultural Transport and Allied Workers of Costa Rica (SINTRASTAFCOR). These are affiliated to the complainant organizations CTRN and FENTRAGH, which are themselves affiliated to the IUF/UITA.
235. Regarding enterprise A, the complainants allege that: (i) on 24 March 2019, the enterprise abruptly closed the work site located in the province of Limón without prior notice, which had an impact on the employment of 480 workers; and (ii) the enterprise revoked the collective agreement signed with SINTRASTAFCOR and dismissed SINTRAGA and SINTRASTAFCOR union representatives without following legal procedures or respecting their trade union immunity. They also allege that the Ministry of Labour and Social Security (hereinafter MTSS) failed to guarantee the protection of trade union immunity and the collective agreement; rather, through an agreement, it endorsed the authorization of the illegal closure of the work site and, as a result the dismissals.
236. Regarding enterprise B, the complainants allege that: (i) on 4 March 2019, the enterprise abruptly, and using violence, closed the work site located in the province of Limón, which had an impact on the employment of 380 workers, including SINTRACOBAL union leaders; and (ii) the enterprise revoked the collective labour agreement signed with the trade union and deprived it of the union premises located inside the enterprise, denying it access to the building to which it has a right under article 101 of the above-mentioned collective agreement. The complainants state that inside the union premises there is a training room and offices with furniture and fittings, documents, office equipment, computers, a camera, video projectors, a television screen, records and accounts and other property and documents, and allege that to date the enterprise has failed to provide any information on their whereabouts. They also allege that vehicle BDB-037, which belongs to SINTRACOBAL, was still inside the enterprise's facilities and that, following a complaint filed by SINTRACOBAL with the MTSS, labour inspectors visited the work site and issued an official report.
237. The complainants consider that no provision is made in the Labour Code for any mechanisms, other than illegal work stoppages, to oppose mass dismissals, and allege that protection through the MTSS system to monitor unfair labour practices is slow, bureaucratic and does not act *ex officio*. The complainants state that complaints were filed with the Limón Labour Court regarding the closure of both work sites and point out that, in the case of enterprise A, the court rejected the complaint and indicated that it was not appropriate to process a socio-economic collective dispute, as the dismissals

had already been carried out and there was no longer any dispute to prevent. The complainants consider that the court completely failed to take into account the fact that the union leaders had been dismissed without following the relevant procedure and that a collective agreement had been revoked (File No. 19-000071-0679-LA). With regard to enterprise B, they state that the Limón Labour Court also rejected the claim for the closure to be classified as an illegal lockout, which is being processed under File No. 19 000250-0679-LA, and that an appeal against the ruling has been filed by the trade union.

- 238.** The complainants allege that the purpose of the mass dismissals was to outsource work to contractors where freedom of association is not observed and consider that this is all happening with complete impunity and without any significant action being taken by the MTSS. They also highlight that, according to the 2018 report issued by the National Statistics and Census Institute, the province concerned has the lowest Human Development Index in the country and that 43 per cent of the population is excluded from formal employment. They indicate that illiteracy and poverty rates are also high, and that the actions of these enterprises are therefore exacerbating the current situation.

## B. The Government's reply

- 239.** In its communications of 19 December 2019 and 6 October 2021, the Government sent its observations (which include reports from the Office of the Deputy Minister of Labour and Social Security for the Labour Sector, the Directorate of Labour Affairs and the National Directorate and General Labour Inspectorate, as well as from the judiciary), and the responses of the enterprises concerned.
- 240.** Regarding enterprise A, the enterprise indicates that: (i) on 24 January 2019, it informed the workers of the imminent closure of the work sites located in the province of Limón; (ii) the closure was due to the services carried out at that work site being taken over by a multinational port company that had the public works concession for the container terminal; (iii) on 24 and 28 January the enterprise held conciliation meetings at the MTSS regional headquarters in Limón with SINTRASTAFCOR (with which it had signed a collective agreement), the CTRN, FENTRAGH, the minister, deputy ministers and head of coordination of the Alternative Dispute Resolution Unit at the MTSS Limón headquarters; (iv) on 28 January, the parties reached an agreement in which the enterprise undertook to take steps that were not only financial in nature but that would also have a far-reaching social scope: agreement on total settlement payments, together with three months of additional wages for each worker; recognition of school scholarships for the 2019 academic year and the issuance of school supply kits; and payment of dues so as to ensure pensions for workers who were due to retire in 2019. In addition, workers were encouraged to form a productive organization, which was set up on 16 March 2019 with the support of the MTSS under the cooperative system, called COOPESITRACO RL. Some 124 former workers of the enterprise took part in the meeting to establish the cooperative, which was registered on 3 April 2019. The enterprise undertook to provide free workshop and office facilities free of charge to a state institution to enable COOPESITRACO RL to provide services such as maintenance and repair of containers to various enterprises in the area; and (v) all the commitments were satisfactorily met for all the former workers, including for the SINTRASTAFCOR and SINTRAGA union leaders, who were also paid seven additional months of wages, which made a total settlement payment of ten months of additional wages.
- 241.** Enterprise A states that the former workers referred a socio-economic collective dispute to the Labour Court of the First Circuit of the Atlantic Region, Limón, on 24 January 2019

(File No. 19-000071-0679-LA), under the agreements reached on 28 January, (paragraphs 8 and 12 of the special minutes). However, the workers' representatives who represented the workers in question at the conciliation meeting agreed to withdraw the proceedings because a settlement had been reached. The enterprise also states that SINTRASTAFCOR and COOPESITRACO RL expressed their uneasiness over, and disagreement with, the filing of this complaint.

- 242.** For its part, the Government reports that, on 28 January 2019, the above-mentioned court flatly rejected the socio-economic collective dispute, as it involved a complete closure of the work site and not an employer's work stoppage or lockout. The Government also indicates that the National Directorate and General Labour Inspectorate have no record of any complaint against enterprise A. The Government gives details of the conciliation hearings that took place on 24 and 28 January 2019 at the offices of the Alternative Dispute Resolution Unit in Limón and mentions each of the points of the agreement reached by the parties on 28 January, highlighting that: (i) the enterprise, the workers and the ministry undertook to issue a press release, indicating that an agreement satisfactory to both parties had been reached, which was indeed issued; (ii) the union accepted and acknowledged that the agreement was binding for the enterprise's unions and workers, including SINTRASTAFCOR union leaders; (iii) the union undertook to withdraw the collective dispute proceedings brought before the courts; and (iv) the union would inform workers and former workers of the agreement in order to ensure social peace between the parties, and the Ministry of Labour agreed to keep channels of communication and dialogue open on employment-related matters in the Limón area, and to set up a social dialogue table for the private sector in order to promote employability initiatives.
- 243.** Regarding the collective agreement signed between enterprise A and SINTRASTAFCOR, the Government indicates that, according to File No. 913 held by the Department of Labour Relations, this was approved by Decision No. DAL-DRT-OF-515-2018 of 9 October 2018 and there is no document indicating that the collective agreement has been revoked. The Government also indicates that on 20 August 2019, an ex officio investigation was carried out in order to determine whether the company had dismissed workers protected by trade union immunity without having previously requested authorization. The Government indicates that this investigation could not be carried out because the work site was closed and that in any case there had been a tripartite negotiation between the union, the company and the Ministry, which resulted in the signing of the agreement of 28 January 2019.
- 244.** Regarding enterprise B, the enterprise indicates that: (i) the closure of operations was conducted in compliance with a public works concession contract involving logistics operations nationally; (ii) the dismissal of workers was for objective reasons, given that there had been a complete closure of operations; (iii) on 3 March 2019, all workers and SINTRACOBAL were notified of the regrettable closure of operations as of 4 March, which led to the dismissal of 172 workers (not 300 workers as claimed by the complainants); (iv) the dismissal only became effective on 27 March because union representatives had filed a socio-economic collective dispute with the MTSS, which had the immediate effect of suspending labour relations; and (v) the enterprise and the Government indicate that, although a series of conciliation hearings were held on 13, 14, 25 and 27 March, at which the conciliation tribunal put forward proposals with a view to the parties reaching satisfactory agreements by mutual consent, the parties were unable to reach agreement and conciliation efforts were therefore terminated on 27 March 2019, with the dismissals taking place as of that date.



- 245.** The enterprise denies outsourcing all the services provided at the site and emphasizes that it was public knowledge that the services previously provided at the site had been taken over by the multinational port company that has the public works concession for the design, financing, construction, operation and maintenance of the container terminal in Moín, Limón province. The enterprise claims to have complied with all of its obligations, including the payment of the compensation referred to in article 99 of the collective agreement (an article that provided for the possible complete closure of operations, as well as compensation in addition to that provided for in the Labour Code). Regarding access to the union office, the enterprise indicates that it had informed the workers and SINTRACOBAL that, if they needed to enter the facilities, for security reasons they should coordinate with human resources staff. It notes that, in any case, union representatives entered the offices on 5 May and removed the property, including the vehicle that was still there.
- 246.** The Government indicates that, on 9 March 2019, SINTRACOBAL applied to the Labour Court of the First Judicial Circuit of the Atlantic Zone, Limón, for the lockout imposed by enterprise B to be declared illegal (File No. 19-000250-0679-LA). The Government indicates that the ruling determined that it was a complete closure of the work site and not a temporary closure or lockout. It further indicates that, on 12 March 2019, an appeal was filed against the ruling and that the Civil and Labour Court of Appeal of the Atlantic Zone, Limón branch, upheld the first-instance ruling through ruling No. 2019-144 of 16 May 2019.
- 247.** Regarding the collective agreement signed between the enterprise and SINTRACOBAL, the Government indicates that it was approved by Decision No. DAL-DRT-OF-535-2018 of 30 October 2018 and that there is no record of any document showing that the collective agreement has been revoked. The Government also indicates that three administrative proceedings involving the enterprise are pending with the Office of the Labour Inspectorate of Limón: (i) a complaint filed on 6 March 2019 by SINTRACOBAL for alleged unfair labour practices and trade union persecution, as a result of which a labour inspection was carried out immediately at the work site, which confirmed that the work site was closed; on 24 September 2021, it was noted that an appeal for review filed by the enterprise in April 2019 against the inspection report had not been resolved and, therefore, the inspector in charge decided that the appeal would be resolved as soon as it would be possible to enter the work site, (ii) a complaint filed on 2 April 2019 relating to the illegal dismissal of a pregnant worker. Although the court of first instance ordered the enterprise to revoke the dismissal of the worker, an application for judicial review was filed and, in the labour inspector's report dated 20 May 2019, it was concluded that there had been no discriminatory dismissal on the grounds of pregnancy given that all staff at the work site had been dismissed due to the enterprise's financial situation (the Government indicates that on 8 November 2019, the file was ordered to be definitively closed); and (iii) a letter submitted on 9 April 2019 to the Inspection Department of the Limón office, in which the enterprise notified the dismissals carried out on 27 March, which included persons protected by special immunity. Regarding the latter, the Government indicates that an investigation was opened, which found that the enterprise had not followed the procedure for authorizing the dismissal of workers protected by trade union immunity provided for in the Labour Code and the Labour Inspectorate's manual of legal procedures. Therefore, on 7 August 2019, the inspectors were instructed to verify whether the employer's action had been based on an objective decision (definitive closure of the work site) and whether there were any discriminatory motives. The Government indicates that on 29 September 2021 a visit to the work site was carried out and it was



corroborated that it had been closed since 4 March 2019. The Government emphasizes that the actions of the MTSS have always been in strict compliance with the legal framework and that the ministry did not authorize any of the dismissals of the workers protected by trade union immunity.

### C. The Committee's conclusions

- 248.** *The Committee notes that, in the present case, the complainants allege that in early 2019 enterprises A and B closed the port operation work sites located in the province of Limón and that in this context the mass dismissals of workers and trade union representatives were carried out without following established procedures, and that the collective agreements in force at these work sites were revoked. They also allege that the MTSS has had a lax approach to the above-mentioned facts.*
- 249.** *The Committee notes from the documents attached by the complainants and from the Government's reply that the closure of enterprise A's work site took place on 24 January 2019. Furthermore, the Committee regrets to note that, according to the allegations and the enterprises' responses, the closure of both work sites took place without giving prior notice to the workers and/or the trade unions: enterprise A closed the work site on 24 January and notified it on the same day, and enterprise B closed the work site on 4 March and notified it the day before.*
- 250.** *The Committee notes that the complainants and the enterprises agree that there was a complete closure of both work sites, affecting all workers; in other words, not only union members. They also seem to agree that the closure of the work sites was related to the opening of the new container terminal in Moín, in the province of Limón, operated by a multinational port company with the public works concession for the design, financing, construction, operation and maintenance of the terminal. While the complainants also allege that the purpose of the closure of the work sites and the dismissals was to outsource the work, the Committee notes that, according to enterprise B, it was public knowledge that the services previously carried out there had been taken over by the multinational port company mentioned above.*
- 251.** *The Committee notes that both the complainants and the Government indicate that: (i) the former workers of both work sites applied to the courts for the lockout imposed by the enterprise to be declared illegal (the complainants consider that no provision is made in the Labour Code for any mechanisms, other than illegal work stoppages, to oppose mass dismissals); and (ii) both proceedings were rejected in both first and second instance on the grounds that what had occurred was a complete closure of the work sites, the termination of the employment contract by the employer and not a temporary closure or stoppage of work.*
- 252.** *The Committee also notes that the Government provides detailed information concerning conciliation meetings that allegedly took place after the closure of both work sites. In the case of enterprise A, the Government indicates that, on 24 and 28 January 2019, conciliation meetings were held at the regional headquarters of the MTSS in Limón between the enterprise, SINTRASTAFCOR, CTRN and FENTRAGH and that on the 28 January they reached an agreement in which the enterprise undertook to take steps not only of a financial nature, such as providing compensation and benefits, but that would also have a far-reaching social scope, such as the establishment of a cooperative, formed with 124 of the former workers, providing services at the container terminal. The Government also indicates that the parties agreed that the union would inform the former workers of the agreement in order to ensure social peace; that the union undertook to withdraw the court proceedings; and that the union and the MTSS undertook to maintain channels of communication and dialogue open on employment-related matters in the Limón area, and to set up a dialogue table for the private sector in order*

to promote employability initiatives. The Committee also notes that, according to the Government, SINTRASTAFCOR and the cooperative expressed their uneasiness over, and disagreement with, the filing of the present complaint.

- 253.** *With regard to enterprise B, the Committee notes that, according to the Government, although conciliation hearings were held on 13, 14, 25 and 27 March and the MTSS had sought the best channels of dialogue between the parties, the conciliation was terminated on 27 March 2019. The Committee also notes that the Government indicates that: (i) the dismissals, carried out on 27 March, were notified by the enterprise to the Limón Inspection Department on 9 April 2019; (ii) given that the dismissals included members of the trade union's executive committee and representatives, an investigation was ordered; and (iii) the inspection report concluded that the enterprise had not followed the procedure for authorizing the dismissal of the workers provided for in the Labour Code and the Labour Inspectorate's manual of legal procedures, and on 7 August 2019 the inspectors were instructed to verify whether the employer's action had been based on an objective decision (definitive closure of the work site) and whether there were any discriminatory motives. The Committee notes that, as indicated by the Government, on 29 September 2021 a visit to the work site was carried out and it was corroborated that it had been closed since 4 March 2019. The Committee also notes that the above-mentioned court proceedings found that it was a complete closure of the work site.*
- 254.** *Regarding the allegation that enterprise B did not allow the trade union access to its premises, where it had furniture and fittings, documents and a vehicle belonging to it, the Committee notes that, according to the enterprise, it had informed SINTRACOBAL that access to the premises had to be coordinated with the human resources staff and that, in any case, on 5 May union representatives entered the offices and removed the property, including the vehicle they were keeping there.*
- 255.** *With regard to the allegation that both enterprises revoked the collective agreements signed with the respective trade unions, the Committee notes that, according to the Government, there is no indication in any document that the collective agreements have been revoked. It also notes that, according to enterprise B, it has complied with all its obligations, including the payment of the compensation referred to in article 99 of the collective agreement (an article which provided for the possible complete closure of the work site, as well as compensation in addition to that provided for in the Labour Code).*
- 256.** *Recalling the importance that the Committee attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved, and to governments consulting with trade union organizations to discuss the consequences of restructuring programmes on the employment and working conditions of employees [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1523 and 1555], the Committee trusts that the dialogue table to be set up under the above-mentioned conciliation agreement of 28 January 2019 will finally be established and that it will help to keep the channels of communication and dialogue open between all parties concerned on employment-related matters in the Limón area.*

## The Committee's recommendation

- 257.** **Trusting that the aforementioned dialogue table is set up, and in light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not require any further examination.**

Case No. 3380

Interim report

**Complaint against the Government of El Salvador  
presented by  
the National Association of Private Enterprise (ANEP)**

**Allegations: acts of harassment and interference against ANEP and its leaders by high-ranking government representatives, in particular through the non-recognition of its new president**

- 258.** The complaint is contained in a communication from the National Association of Private Enterprise (ANEP) dated 4 June 2020.
- 259.** The Government sent its observations in a communication dated 22 June 2020.
- 260.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 261.** The complainant denounces acts of harassment and interference against ANEP and its leaders, in particular its president, by high-ranking representatives of the Government of El Salvador, including the President of the Republic. The complainant notes that ANEP is the most representative employers' organization in El Salvador, comprising 49 entities in more than 50 subsectors of the economy and more than 15,000 enterprises, representing 82 per cent of the gross domestic product.
- 262.** In particular, ANEP indicates that: (i) on 29 April 2020, at its general assembly, its member organizations unanimously elected Mr Javier Ernesto Simán Dada as president along with its new board of directors for a two-year period; (ii) on 12 May, the President of the Republic posted on the Twitter social network that "It is evident that the new leadership of ANEP El Salvador is only seeking to sabotage the work of the Government. Worse still, in the middle of a pandemic. ... From now on, the Government does not recognize Javier Simán as the representative of private enterprise"; (iii) on his Facebook page, the President of the Republic wrote that "It is clear that ANEP is free to elect and have as members whoever it wants ... But what is the point of having someone lead an organization if he is no longer of any use? In any case, the vast majority of business owners in our country want to move forward and do not feel represented by ANEP. The majority of employers' associations (many of which are never taken into consideration) want to work for El Salvador and do not place their political interests before the well-being of everyone. We will be working hand in hand with those associations. Gone are the days in our Government when ANEP told the President of the Republic what to do"; (iv) on the same day, the Presidential Commissioner of Operations and Cabinet, Ms Carolina Recinos, publicly reaffirmed the President's decision not to recognize Mr Simán Dada as president of ANEP and representative of the private sector, stating that "In difficult circumstances, personalities and agendas are identified. We cannot use

the crisis of the pandemic as a platform to attack”; (v) messages were sent via various government officials and/or representatives of the governing party harassing Mr Simán Dada or saying that they did not recognize him, and higher orders were given to arbitrarily close one of the enterprises of the business group to which Mr Simán Dada belongs, which had permits from the Ministry of Health and the Ministry of Labour to produce face masks and medical gowns, both for export and for the Government of El Salvador; and (vi) on 21 May 2020, the Minister of Labour and Social Welfare made statements on Salvadorean television channels 2, 4 and 6 indicating that a few days before, representatives of associations came to see him at the Ministry of Labour and he received them because at no point did they say that they were representing ANEP; he also indicated in the same interview that the doors of the Ministry of Labour were immediately completely closed to Mr Simán Dada, saying that the position of the Government and the Ministry of Labour is to work and meet with all sectors except ANEP.

## B. The Government’s reply

- 263.** In a communication dated 22 June 2020, the Government indicates that it is respectful of social dialogue and of the legitimacy that characterizes the representation of both workers and employers. The Government states that at no point was there any interference on its part in the electoral process and activity of the board of directors or president of ANEP because the Government (at the time of its communication in response to the complaint) was not aware of whether there had been an election for the board of directors. The Government affirms that it is therefore unaware of whether Mr Javier Ernesto Simán Dada was elected president of the Association at its general assembly as stated in the complaint.
- 264.** To confirm the above, the Government indicates that it requested the Registry of Non-Profit Associations and Foundations of the Ministry of the Interior (which is responsible for maintaining the registries and documentation related to associations and foundations, as well as information on their legal representatives) to provide details on the last appointment or election of ANEP’s legal administration entered in the registry. The Director General of the Registry of Non-Profit Associations and Foundations replied on 25 May 2020 stating that the latest certification on record for ANEP concerned the board of directors that was elected in April 2018 for a two-year term and that “no official application to register a new board of directors appears to have been submitted by the National Association of Private Enterprise”. The registry was consulted again on 19 June 2020, and the Government was informed again by a memo of 22 June that no request to register a new board of directors or to restructure the board had been submitted thus far. The Government provides a copy of these communications.
- 265.** Concerning the alleged closure of enterprises of the business group linked to Mr Simán Dada, the Government indicates that no isolated action was taken against him or the business group to which he belongs. It states that the action was part of general measures taken in relation to the lockdown and mandatory quarantine that was decreed by law to contain the pandemic, as the priority of the Government in combating the virus was the life and health of all persons.

## C. The Committee’s conclusions

- 266.** *The Committee notes that the complaint denounces acts of interference and harassment against ANEP and its leaders by high-ranking government representatives, in particular through the non-recognition of its new president, Mr Simán Dada, who was elected by the complainant’s general assembly on 29 April 2020. The Committee observes that the*

*Government argues that it could not have interfered in the electoral process as it was not aware of it taking place. The Government indicates that it has no knowledge as to whether elections have been held for the board of directors and presidency of ANEP and that there is no record of the election of a new board of directors and president in the relevant registry. In this regard, and noting that there is no question as to the conduct of the electoral process, the Committee invites the complainant organization, if it has not already done so, to complete the formalities to register its new board of directors.*

- 267.** *The Committee observes, however, that the Government does not question the authenticity of the public statements denounced in the complaint, which were made at the highest level of State. Not only do those statements imply an expression of knowledge of the ANEP elections, but they also state clearly and unequivocally that the authorities do not recognize the election result and, in particular, the new president of ANEP. Nor does the Government question the statements made by other public authorities, in particular the Minister of Labour, in which they explicitly do not recognize the president of ANEP, and consequently reject ANEP as a social partner.*
- 268.** *In this regard, and while it recognizes that the registration of new boards of directors of employers' and workers' organizations is a formality that national legislation may establish to make public and give full effect to the results of elections of those organizations, the Committee considers that the actions denounced in the complaint of non-recognition of the president and board of directors of ANEP and the rejection by the highest public authorities of the representative organization of employers after its April 2020 elections constitute a serious violation of freedom of association in general and, in particular, of the autonomy of employers' and workers' organizations and their right to freely elect their representatives. The Committee considers that, in view of the well-known fact of the election of the president of the most representative employers' organization in the country, which was widely publicized in the media, the requirement of a procedural formality in order to be recognized and to be able to act as a legitimate spokesperson before the authorities is an act that is not compatible with the principle of freedom of association.*
- 269.** *The Committee recalls in this regard that when the authorities intervene during the election proceedings of workers' or employers' organizations, expressing their opinion of the candidates and the consequences of the election, this seriously challenges the principle that those organizations have the right to elect their representatives in full freedom, and that it is for such organizations to appoint their own representatives on consultative bodies.*
- 270.** *Furthermore, the Committee notes the June 2021 discussion before the Committee on the Application of Standards of the International Labour Conference on the application in El Salvador of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the fact that the Committee urged the Government to refrain from interfering in the establishment and activities of independent organizations of workers and employers, in particular ANEP.*
- 271.** *In the light of the foregoing, and deploring the situation denounced, the Committee requests the Government to immediately take the necessary measures to ensure full respect of ANEP's autonomy, recognize the results of its April 2020 elections, in particular of its president, Mr Simán Dada, and recognize the employers' organization as a social partner so as to enable ANEP to participate fully in social dialogue through the representatives of its choice.*
- 272.** *As to the alleged incidents of harassment against the business group of the president of ANEP, the Committee observes significant discrepancies between the claims contained in the complaint – stating that the Government arbitrarily ordered the closure of an enterprise of that business group – and the Government's reply – stating that the action was a general*



*measure taken as part of the lockdown and mandatory quarantine decreed by law to contain the pandemic. In view of these discrepancies, the Committee invites the complainant organization to provide further details on the alleged harassment of the business group of the president of ANEP or of any other company affiliated to this organization that is the target of hostile actions, so that the matter can be examined with all relevant elements, and requests the Government to provide further information in support of its assertion that the action challenged in the complaint was a general measure.*

## The Committee's recommendations

**273. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**

- (a) The Committee requests the Government to immediately take the necessary measures to ensure full respect for the autonomy of the National Association of Private Enterprise (ANEP), recognize the results of its April 2020 elections, in particular of its president, Mr Javier Ernesto Simán Dada, and recognize the employers' organization as a social partner, so as to enable ANEP to participate fully in social dialogue through the representatives of its choice.**
- (b) The Committee invites the complainant organization to provide further details on the alleged harassment of the business group of the president of ANEP or of any other company affiliated to this organization that is the target of hostile actions, and requests the Government to provide further information in support of its assertion that the action challenged in the complaint was a general measure.**

### Case No. 3378

Report in which the Committee requests to be kept informed of developments

**Complaint against the Government of Ecuador presented by**

- the Ecuadorian Confederation of United Workers' Organizations (CEDOCUT) and**
- the United Workers' Front (FUT)**

**Allegations: The complainant organizations denounce the opening of criminal proceedings against the president of the CEDOCUT and incumbent president of the FUT following his participation in protests, and the lack of social dialogue on proposed labour reforms**



- 274.** The complaint is contained in a communication dated 5 February 2020 sent by the Ecuadorian Confederation of United Workers' Organizations (CEDOCUT) and the United Workers' Front (FUT).
- 275.** The Government of Ecuador sent its observations on the allegations in a communication dated 24 April 2020.
- 276.** Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

- 277.** In their communication dated 5 February 2020, the CEDOCUT and the FUT denounce the criminal proceedings brought against Mr Manuel Mesías Tatamuez Moreno, president of the CEDOCUT and incumbent president of the FUT, following the protests that took place in the country between 3 and 13 October 2019. They also denounce the lack of social dialogue on the labour reforms proposed by the Government.
- 278.** The complainant organizations state that, in October 2019, the President of Ecuador, by Executive Decree No. 883, abolished fuel subsidies, which led to a hike in the price of "extra" petrol – the most widely used type of petrol in the country – of just over US\$0.50 per gallon.
- 279.** The complainant organizations state that the transport workers' union called a strike, blocking highways and roads across the country, which triggered a series of protests in Ecuador, during which there were clashes between the police, who were trying to maintain public order, and thousands of protesters outraged by the economic measures that had a serious impact on their daily lives. They state that hundreds of indigenous communities and workers descended on Quito as the days went by to gather at these protests.
- 280.** The complainant organizations further state that: (i) in April 2019, before the introduction of the above-mentioned economic measures under Executive Decree No. 883, the Government had announced a package of labour reforms to enhance flexibility, including the creation of a new type of contract (the entrepreneurship contract), and the scrapping of the employer's pension scheme, to be replaced by a monthly contribution corresponding to time worked; (ii) the Government had held a dialogue on this package of reforms only with organizations that were supportive of its policies, with no regard for the leaders of the country's main trade union confederations; (iii) this situation was compounded by the instability felt by public sector employees as a result of the use of occasional service contracts; and (iv) because of the lack of dialogue, the trade union confederations had planned a national strike in April 2019 as a means of applying pressure in order to get the Government's attention.
- 281.** The complainant organizations claim that, in the above-mentioned context, and in view of the economic measures adopted by the Government with the support of the International Monetary Fund, social sectors, indigenous organizations, trade unions and transport organizations held demonstrations in October 2019, leading to a national strike. Referring to a report by the Inter-American Commission on Human Rights, which found that excessive force was used by the security forces in keeping the protests under control, the complainant organizations claim that there were widespread clampdowns during the national strike and that many people were killed in clashes between protesters and the Ecuadorian police, and hundreds were injured and arrested.

- 282.** The complainant organizations state that Ecuador faced a serious crisis and that the Government declared a state of emergency throughout the country in response to the protests. They allege that the President of the Republic, despite initially refusing to engage with the organizations, had no choice but to enter into dialogue under the auspices of the United Nations and end the conflict by repealing Executive Decree No. 883 and introducing other measures, of benefit to the whole country. In this regard, they refer to the role played by the trade union confederations in calling for dialogue with the Government.
- 283.** The complainant organizations allege that, after the conflict, the Government disregarded the agreements reached under the auspices of the United Nations and filed a criminal complaint against the leaders of the October 2019 movement – both union leaders and indigenous leaders – for the kidnapping of public forces on public premises where an indigenous hearing was being held, attended by thousands of people, including union leaders who went to show their support for the objectives of the national strike that had been called before the month of October.
- 284.** The complainant organizations specifically claim that Mr Manuel Mesías Tatamuez Moreno, president of the CEDOCUT and incumbent president of the FUT, received an official request for information, dated 24 October 2019, in relation to the above-mentioned criminal complaint. They also report that, on 7 January 2020, Mr Tatamuez Moreno was summoned to the Prosecutor’s Office to give his version of events. He stated that he had not been involved in any kidnapping, and neither had he been aware of any intention to kidnap any police officer or journalist at that location, but that he had taken part in a peaceful demonstration. According to the complainant organizations, the aim of this action by the Government is to stop trade union leaders from fighting against labour reform policies in the country, which constitutes an anti-union act that is contrary to the provisions of Articles 1, 8 and 11 of Convention No. 87 and Articles 1, 2 and 4 of Convention No. 98. They claim that the Government has breached these Conventions by interfering in the criminal justice system with a view to restricting, through fear and intimidation, the exercise of trade union rights in general and the freedom of expression of trade union confederations in particular.
- 285.** The complainant organizations further allege that the Government has failed to fulfil its obligation to facilitate communication between the social partners in relation to the proposed labour reforms. In this regard, the complainant organizations: (i) claim that the Government held meetings to validate State policies only with trade unions associated with public enterprises that are dependent on the State, without any representation of workers in the private sector and that, consequently, there is not a climate of social dialogue; and (ii) request to be informed of the proposed labour reforms before their imminent submission to the National Assembly.

## **B. The Government’s reply**

- 286.** In its communication dated 24 April 2020, the Government states that the present complaint bases its arguments largely around the issuance of Executive Decree No. 883 of 1 October 2019. It states that this Decree was issued because there was a clear need to reform the Substitute Regulations on the regulation of the price of hydrocarbon derivatives in accordance with the economic decisions adopted by the Government of Ecuador, which were aimed at setting new fuel prices to reflect the economic circumstances of the country in order to safeguard the interests of the State and prevent fuel smuggling. The Government states that it is a well-known fact that the adoption of this decision led to a series of demonstrations against the measure.

- 287.** The Government reports that, as a result, on 3 October 2019, by Executive Decree No. 884, the President of Ecuador declared a nationwide state of emergency on account of the circumstances of serious domestic unrest, as the blockades in various parts of the country had disturbed public order by impeding normal vehicular traffic, leading to outbreaks of violence that jeopardized the security and safety of individuals. In accordance with the provisions of section 1 of that Executive Decree, it also warned of a possible radicalization of the mobilizations throughout the national territory, as the various groups were continuing to call for ongoing protests of indefinite duration.
- 288.** The Government explains that section 3 of Executive Decree No. 884 suspended the right to exercise freedom of association and assembly throughout the national territory, strictly on grounds related to the state of emergency and State security, in accordance with the principles of proportionality, necessity and appropriateness, and in strict compliance with other constitutional guarantees. The Government reports that this suspension involved the restriction of gatherings in public spaces at any time of day in order to prevent the rights of other citizens from being violated.
- 289.** The Government also indicates that, as a result of the protests that lasted for several days in the country and the dialogue between the Government and the leaders of the Confederation of Indigenous Nationalities of Ecuador, the Ecuadorian Council of Evangelical Indigenous Peoples and Organizations, and the Confederation of Peasant, Indigenous and Black Organizations, the President of Ecuador, by means of Executive Decree No. 894 of 14 October 2019, decided to rescind Executive Decree No. 883, which led to the end of the demonstrations that had taken place in Ecuador.
- 290.** On this point, the Government states that the Committee, in accordance with its own decisions, is not competent to deal with allegations of a purely political nature and that, in the present case, there is no evidence of violation of the labour or trade union rights of any member of the CEDOCUT or the FUT.
- 291.** Regarding the supposed plan mentioned by the complainant organizations to promote precarious employment, the Government emphasizes that: (i) one of the policies that is planned by the Government and is aimed at promoting employment is the introduction of a type of entrepreneurship contract for newly established businesses, which would include all the labour rights that are already recognized for workers, with a view to boosting employment in Ecuador; (ii) the employer's pension would be maintained, as the State is the guarantor of rights; and (iii) occasional service contracts are part of the labour system established under the Organic Law on the Public Service since the publication of that law on 6 October 2010 and are a type of contract to cater for non-permanent institutional needs in the public sector.
- 292.** The Government goes on to state that the proposed labour reforms mentioned by the complainant organizations have not been submitted to the National Assembly of Ecuador and that social dialogues have been held on an ongoing basis with various actors in the employer and worker sectors, involving representatives of both employers and workers and including the CEDOCUT and the FUT. It claims that the complainant organizations are expressing their disagreement only because the proposals have not been formally shared with their representatives, which does not represent the reality of the situation, as the Ministry of Labour held working groups, including with the complainant organizations, and has publicized the proposals through the media.
- 293.** The Government adds that, since the complainant organizations' allegations refer to draft legislation that has no legal force, the Committee has not got sufficient grounds to pronounce itself on this matter. The Government further states that the complainant

organizations' allegations do not reflect the reality of the labour reforms led by the Ministry of Labour. The Government indicates that, in an effort to enhance employment promotion in order to reduce rates of unemployment and underemployment, it analyzed certain proposals at the time. However, it reiterates that these proposals were not submitted to the National Assembly.

- 294.** With regard to the prosecutor's investigation into the allegations of kidnapping made against Mr Tatamuez Moreno, the Government stresses that, under the constitutional rule of law, the branches of government are duly separated and independent. Accordingly, the Prosecutor-General's Office is responsible for public prosecution proceedings, especially when the offence is reported in a complaint filed under section 421 of the Basic Comprehensive Penal Code (COIP).
- 295.** The Government states that, based on the submission of the complainant organizations, it is apparent that the Prosecutor-General's Office, in accordance with its remit and powers, is conducting a preliminary investigation into the events that took place in the context of the social protests of October 2019 in order to gather evidence, either incriminatory or exculpatory, that will allow the prosecutor to decide whether or not to bring charges. According to the Government, it appears that Mr Tatamuez Moreno has been notified in order to give a voluntary and unsworn deposition, as a person who can shed light on the facts, in accordance with section 582 of the COIP. It reports that, for these reasons and in accordance with the provisions of section 584 of the COIP, the preliminary investigation will have confidential status.
- 296.** The Government specifies that giving a statement before a duly appointed prosecutor does not mean that a person is under suspicion or being prosecuted. It also states that, without prejudice to the above, the Government has been a guarantor of rights to freedom of association, which are completely unrelated to a complaint being pursued for the alleged offence of kidnapping.
- 297.** With regard to the Articles of Conventions Nos 87 and 98 invoked by the complainant organizations, the Government states that the complainant organizations mistakenly argue that there has been interference by the Government in the criminal investigation. It maintains that there is no evidence to suggest that any action has been taken that constitutes a violation of Mr Tatamuez Moreno's rights on account of his status as a trade union leader. It also states that it is perfectly clear that the Government has not undermined trade union rights through national legislation.
- 298.** The Government concludes by reiterating that the claims of the complainant organizations do not concern violations of trade union rights and that, on the contrary, they are based purely on political aspects that are beyond the Committee's remit.

## C. The Committee's conclusions

- 299.** *The Committee takes note that, in the present case, the complainant organizations denounce the opening of criminal proceedings against the president of the CEDOCUT and incumbent president of the FUT, following his participation in a public gathering in the context of popular protests, and the lack of social dialogue on proposed labour reforms in the country.*
- 300.** *The Committee takes note of the timeline of events provided both by the Government and by the complainant organizations, namely: in April 2019, the Ministry of Labour held talks with a number of actors in the employer and worker sectors regarding proposed labour reforms, and the FUT planned at that time to hold a national strike as a means of applying pressure in order to get the Government's attention in view of the Ministry's alleged lack of social dialogue to work together in respect of these reforms. On 1 October 2019, the Government issued*

*Executive Decree No. 883 to reform the Substitute Regulations on the regulation of the price of hydrocarbon derivatives, leading to a hike in fuel prices. In response to this decree and other measures adopted by the Government, a series of protests took place between 3 and 13 October 2019. On 3 October 2019, on account of the circumstances of serious domestic unrest and blockades in various parts of the country, the President of Ecuador declared a nationwide state of emergency by Executive Decree No. 884, which suspended the exercise of the right to freedom of association and assembly. On 14 October 2019, following a dialogue facilitated by the United Nations, the Government repealed Executive Decree No. 883 through Executive Decree No. 894, putting an end to the demonstrations. After the conflict, a criminal complaint was filed against several leaders of indigenous organizations and against Mr Tatamuez Moreno, president of the CEDOCUT and incumbent president of the FUT, for the kidnapping of public forces on public premises. On 24 October 2019, Mr Tatamuez Moreno received a request for information as part of the preliminary investigation conducted by the Prosecutor-General's Office. On 7 January 2020, he was summoned to the Prosecutor's Office and gave his version of events.*

- 301.** *The Committee notes, first of all, the Government's assertion that the claims of the complainant organizations are based purely on political aspects that are beyond the Committee's remit, and that the complaint does not give any reasons that would make it possible to establish that the labour and trade union rights of any member of the CEDOCUT or the FUT have been violated. While noting that the text of the complaint submitted contains general assessments of Government policy, the Committee observes that: (i) the protest actions in which the workers' organizations took part and as a result of which criminal proceedings were brought against Mr Tatamuez Moreno concerned measures likely to affect the interests of workers in the transport sector and the standard of living in other sectors; and (ii) the specific allegations in the present case (criminal proceedings considered to be intimidating against a trade union leader and an alleged lack of consultation with the complainant organizations on proposed labour reforms) concern respect for freedom of association. The Committee will therefore focus its attention on the examination of these allegations.*
- 302.** *With regard to the filing, on 24 October 2020, of a criminal complaint against the president of the CEDOCUT and incumbent president of the FUT for the kidnapping of public forces on public premises, the Committee notes that the complainant organizations state that: (i) Mr Tatamuez Moreno did not participate in any kidnapping nor was he aware of any intention to kidnap any police officer or journalist; and (ii) the criminal proceedings against Mr Tatamuez Moreno are related to his presence at a meeting attended by many participants and at which the trade union organizations, in defence of their demands, lent their support to the indigenous organizations. The Committee notes that the complainant organizations allege in particular that: (i) there is interference by the Government in the criminal proceedings against Mr Tatamuez Moreno; and (ii) the aim of such interference is to stop trade union leaders from fighting against labour reform policies in the country. The Committee notes that the Government, for its part, indicates that, under the constitutional rule of law, the branches of government are duly separated and independent, and that there has been no interference on its part in the criminal investigation by the Prosecutor-General's Office into the events that took place in the context of the social protests of October 2019. It also notes that the Government maintains that giving a statement before a duly appointed prosecutor does not mean that a person is under suspicion or being prosecuted, and that there has been no action that has violated Mr Tatamuez Moreno's rights because of his status as a trade union leader. The Committee takes due note of these points. The Committee notes that the above-mentioned criminal complaint relates to Mr Tatamuez Moreno's participation in a demonstration in the context of the October 2019 protests. Observing that no details have been provided of the*



specific facts that gave rise to the complaint, the Committee recalls that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising protest action and that, while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, the arrest of, and criminal charges brought against, trade unionists may only be based on legal requirements that in themselves do not infringe the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 224 and 133]. The Committee therefore requests the Government to keep it informed of the outcome of the investigation into the criminal complaint brought against Mr Tatamuez Moreno and trusts that, in the context of the examination of that complaint, the competent authorities will take full account of the above-mentioned decisions on freedom of association.

- 303.** With regard to the alleged lack of social dialogue on the proposed labour reforms of April 2019 concerning the creation of a new type of contract (the entrepreneurship contract) and the employer's pension scheme, the Committee notes that the complainant organizations: (i) allege that the Government had held a dialogue on this package of reforms only with organizations that were supportive of its policies, with no regard for the leaders of the country's main trade unions; and (ii) request to be informed of the proposed labour reforms before their imminent submission to the National Assembly. The Committee notes that, for its part, the Government states that: (i) the Ministry of Labour held working groups, including with the complainant organizations, and publicized the proposals through the media; (ii) the proposed reforms were not submitted to the National Assembly; and (iii) the Committee does not have sufficient grounds to comment on proposed reforms, which do not have legal force, and in respect of which the complainant organizations have not submitted precise and detailed allegations, but rather arguments that do not reflect the reality of the labour reforms led by the Ministry of Labour.
- 304.** While recalling that when it has had to deal with precise and detailed allegations regarding draft legislation, the fact that such allegations relate to a text that does not have the force of law should not in itself prevent it from expressing its opinion on the merits of the allegations made [see 376th Report, Case No. 2970, para. 465], the Committee observes that, in the present case, the specific allegations made by the complainant organizations do not refer to the contents of the proposed labour reforms but rather to the alleged lack of social dialogue on the proposed reforms.
- 305.** In this regard, the Committee notes the contradictory accounts of the complainant organizations and the Government on the holding of consultations. The Committee also recalls that it has drawn the attention of governments to the importance of prior consultation of employers and workers organizations before the adoption of any legislation in the field of labour law [see **Compilation**, para. 1540]. Observing that the aspects of the proposed labour reforms relating to the entrepreneurship contract led to the creation of a special system for the recruitment of staff for entrepreneurial work through the Organic Law on Entrepreneurship and Innovation, published on 28 February 2020, the Committee trusts that the Government will ensure that any labour reforms proposed in the future will be prepared in consultation with all the representative organizations of workers and employers concerned.

## The Committee's recommendations

- 306.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) **The Committee requests the Government to keep it informed of the outcome of the examination of the criminal complaint brought against Mr Manuel**



**Mesías Tatamuez Moreno and trusts that, in the context of the examination of the above-mentioned complaint, the competent authorities will take full account of the decisions on freedom of association referred to in the conclusions of this case.**

- (b) The Committee trusts that the Government will ensure that any labour reforms proposed in the future will be prepared in consultation with all the representative organizations of workers and employers concerned.**

## Case No. 2609

### Interim report

#### **Complaint against the Government of Guatemala presented by**

- the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)**
  - the Autonomous Popular Trade Union Movement of Guatemala**
  - Global Unions of Guatemala**
  - the Trade Union Confederation of Guatemala (CUSG)**
  - the General Confederation of Workers of Guatemala (CGTG)**
  - the Trade Union of Workers of Guatemala (UNSITRAGUA) and**
  - the Movement of Rural Workers of San Marcos (MTC)**
- supported by**
- the International Trade Union Confederation (ITUC)**

**Allegations: The complainant organizations allege numerous murders and acts of violence against trade union members and flaws in the system that result in criminal and labour-related impunity**

- 307.** The Committee has already examined the substance of this case on a number of occasions, which was presented for the first time in 2007. The Committee last examined the case at its October 2019 meeting and on that occasion it submitted an interim report to the Governing Body [see 391st Report, approved by the Governing Body at its 337th Session (October–November 2019), paras 270–302].<sup>5</sup>
- 308.** The Autonomous Trade Union Popular Movement of Guatemala and the Global Unions of Guatemala sent new allegations in a communication dated 14 October 2021.
- 309.** The Government sent its observations in communications dated 9 December 2019, 3 January, 27 January, 24 October, 26 October and 11 December 2020, and 1 February, 28 July, 30 September, 22 and 25 October 2021.

<sup>5</sup> [Link to previous examinations.](#)

**310.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154).

## A. Previous examination of the case

**311.** At its October 2019 meeting, the Committee made the following recommendations [see 391st Report, para. 302]:

- (a) The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity; the Committee urges the Government to take all necessary measures to prevent the commission of any further acts of anti-union violence.
- (b) The Committee again urges the Government, with the active participation and monitoring by the subcommittee on implementation of the road map, to continue to take and intensify, as a matter of urgency, all the necessary measures to ensure efficiency in the investigations of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigation. In that connection, the Committee specifically urges the Government to: (i) maintain and strengthen the role of the subcommittee on implementation of the road map; (ii) facilitate, with the support of the subcommittee, the reactivation of the trade union committees of the Public Prosecutor's Office and the Ministry of the Interior; (iii) significantly increase the human and financial resources of its Special Investigation Unit; (iv) maintain and continue to strengthen collaboration between the Special Investigation Unit and the DEIC of the Civil Police; (v) take the necessary measures to ensure the competent authorities dedicate the attention and resources required for investigations of murders indicated in paragraph 295 of this report, and (vi) continue to strengthen dialogue with the judiciary to ensure, through the courts for high-risk cases or other appropriate mechanisms, that cases of anti-union violence are promptly examined by criminal courts. The Committee requests the Government to keep it informed in this respect.
- (c) The Committee urges the Government to, with the active participation and monitoring of the subcommittee of the implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Special Investigation Unit for the analysis of attacks against human rights advocates of the Ministry of the Interior; (ii) improve coordination between the Public Prosecutor's Office and the Ministry of the Interior in the granting and handling of security measures for member of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, including personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government keep it informed in this respect.
- (d) The Committee requests the Government to maintain full vigilance and take all the necessary measures, including through the provision of personal protection measures, to prevent and stop homicides and all acts of violence against municipal trade unions.
- (e) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

## B. New allegations

**312.** In a communication dated 14 October 2021, the Autonomous Trade Union Popular Movement of Guatemala and the Global Unions of Guatemala denounce: i) the murder in 2020 of 5 members of trade union organisations (Messrs Gerson Hedelman Ortiz Amaya, from the Union of Workers of the Institute of Municipal Development-SINTRAINFOM-, José Miguel Alay, from the Union of the University of San Carlos-STUSC, Héctor David Xoy Ajualip, of the Union of Workers of the enterprise Fritolay-GFLG Pepsico- SITRAFRITOLAY-GFLG-Pepsico, Julio César Zamora Álvarez, of the Union of Workers of the Port Enterprise Quetzal and Ludim Eduardo Ventura Castillo of the Union of Education Workers of Guatemala-STEG) and 5 members of peasant organisations; ii) the murder of Ms. Cinthia del Carmen Pineda Estrada, leader of the STEG in 2021; iii) the commission of other serious acts of anti-union violence throughout 2020 and 2021, including 3 armed attacks and several death threats, especially against leaders and members of municipal unions; iv) the absence of results in the criminal prosecutions due to a lack of will; and v) budgetary retaliatory measures against the Human Rights Prosecutor's Office by the Executive Branch and the Congress of the Republic after the Prosecutor had requested investigations and the implementation of preventive and protective measures in favour of trade unionists and human rights defenders.

## C. The Government's reply

**313.** Through its various communications sent since the Committee's last examination of the present case in October–November 2019, the Government has provided information on the institutional initiatives taken to investigate the acts of anti-union violence reported in the present case and to protect members of the trade union movement who may be at risk.

**314.** In its communication of 9 December 2019, the Government forwards meeting record No. 03-2019 of the meeting held on 22 October 2019 of the Subcommittee on Implementation of the Road Map of the National Tripartite Commission on Labour Relations and Freedom of Association (hereinafter referred to as the subcommittee on implementation of the road map), which was attended by representatives of the Public Prosecutor's Office and the Ministry of the Interior. The document shows that: (i) the Ministry of the Interior described to the subcommittee on implementation of the road map the mechanisms leading to the granting of security measures for members of the trade union movement who may be at risk, emphasizing the importance that any act that places the security of individuals in jeopardy should also give rise to a complaint to the Public Prosecutor's Office; (ii) there was sharing of information and a discussion between the members of the subcommittee and representatives of the Public Prosecutor's Office on the progress of investigations into a number of homicides of trade union leaders and members; (iii) special attention was paid to the investigations into the deaths of several members of the Union of Commercial Workers of Coatepeque; (iv) there was a discussion on whether trade union activity had been taken into account in the investigations as a possible motive for the homicides; and (v) the subcommittee requested the Public Prosecutor's Office to provide information on the number of convictions handed down for instigating the homicides of trade union leaders and members.

**315.** In its communication of 3 January 2020, the Government forwards a report of the Ministry of the Interior dated 10 December 2019. The Ministry of the Interior first refers to its collaboration with the Public Prosecutor's Office regarding investigations into acts of violence committed against members of the trade union movement, indicating in this

regard that: (i) it has a specialized team of investigators who form part of the unit dealing with attacks against human rights advocates of the Special Criminal Investigation Division (DEIC) of the National Civil Police; (ii) at the request of the Public Prosecutor's Office, this team carries out field investigations into cases of assaults against trade union members; and (iii) the Ministry of the Interior has recorded 19 such cases, five of which resulted in the arrest of nine persons. The Ministry of the Interior adds that it also has a unit dealing with threats and assaults against human rights advocates, whose investigations are aimed at preventing further offences and thus protecting the lives of those concerned. In this regard, it notes that: (i) 223 cases of threats and assaults against members of the trade union movement have been recorded, 29 of which are still at the investigation stage; and (ii) in 106 cases the perpetrators have been identified.

- 316.** The Ministry of the Interior goes on to refer to the Standing Trade Union Technical Committee on Comprehensive Protection and the Special Investigation Unit for the analysis of attacks against human rights advocates, both of which were the subject of recommendations made by the Committee on Freedom of Association in its last report on the present case. The Ministry of the Interior indicates that, pursuant to Ministerial Decision No. 241-2013 of 29 May 2013 establishing the committee, the Standing Trade Union Technical Committee on Comprehensive Protection was created for a duration of four years, extendable before the period expires. Given that it was not extended before 29 May 2017, a new ministerial decision would have to be adopted to reactivate the committee. The Ministry of the Interior indicates that the Special Investigation Unit for the analysis of attacks against human rights advocates is no longer in operation because of a lack of a working methodology and participation by civil society organizations. The Ministry of the Interior states that since July 2019 it has adopted a methodology for analysing patterns of assaults and attacks against human rights advocates. This matter is the subject of meetings in which both advisers to the First Deputy Minister of the Interior and advisers specializing in human rights from the Ministry of the Interior take part.
- 317.** The Government provides information below from the Public Prosecutor's Office about the establishment in November 2019 of the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists. This unit has a central office, a unit for crimes against judicial officials and a unit for crimes against trade unionists. The latter has 26 staff members (one head of unit, three prosecution officers, two level II assistant prosecution officers, 16 assistant prosecution officers, three officials and one investigator from the Criminal Investigation Directorate), with six additional assistant prosecutors having been appointed compared to 2017.
- 318.** In its communication of 27 January 2020, the Government refers to the meetings held in October and December 2019 by the subcommittee on implementation of the road map and, subsequently, by the plenary of the National Tripartite Commission on Labour Relations and Freedom of Association (hereinafter the National Tripartite Commission). The Government indicates that, at its meeting on 3 December 2019, after examining and exchanging views with the Public Prosecutor's Office on the status of progress in the investigations into a number of homicides of members of the trade union movement, the subcommittee on implementation of the road map recommended that: (i) under the supervision of the subcommittee, a thorough investigation should be carried out into all the cases of homicides of members of the trade union movement that remain unresolved with a view to punishing the perpetrators and instigators of the crimes; (ii) the Trade Union Technical Committee of the Public Prosecutor's Office and the Standing Trade Union Technical Committee on Comprehensive Protection (Ministry of the Interior) should be reactivated; (iii) the court proceedings for the homicides of members of the

trade union movement should be expedited and the National Tripartite Commission should send an official letter to the Supreme Court on this matter; (iv) in view of the high number of homicides of members of the trade union movement still under investigation and the low number of perpetrators identified, the Public Prosecutor's Office should assign a criminal analysis unit to the Special Prosecutor's Unit for Crimes against Trade Unionists; and (v) the Public Prosecutor's Office and the Ministry of the Interior should strengthen their cooperation in the event members of the trade union movement request protection measures and in related investigations.

- 319.** The Government indicates that the plenary of the National Tripartite Commission took due note of the recommendations of its subcommittee on implementation of the road map and, on the basis thereof: (i) requested meetings with the Chief Public Prosecutor and with the new authorities of the Ministry of the Interior to raise the issue of the reactivation of the respective trade union technical committees directly; and (ii) requested a hearing with the Office of the President of the Supreme Court to discuss expediting the court proceedings already under way. The Government reports in this regard that: (i) the Chief Public Prosecutor granted the National Tripartite Commission a hearing for 7 February 2020 and summoned the Trade Union Technical Committee of the Public Prosecutor's Office for a meeting on the same day; (ii) a meeting with the Ministry of the Interior was scheduled for 8 January 2020; and (iii) the plenary of the Supreme Court granted a hearing to the National Tripartite Commission for 29 January 2020.
- 320.** In a communication dated 24 October 2020, the Government provides information from the Public Prosecutor's Office concerning the investigations into the homicides of eight leaders and members of the Izabal Banana Workers' Union (SITRABI) committed between September 2007 and February 2012. The Public Prosecutor's Office first states that none of the victims had "any labour relationship with the entity Frutera del Motagua Sociedad Anónima, nor that any of the deaths were motivated by non-compliance with the collective bargaining agreement between SITRABI and this entity". The Public Prosecutor's Office then provides information on each of the eight cases, which are in the investigation phase, one of the cases having led to an arrest warrant for the perpetrator. With regard to the possible links between the trade union activity of the victims and the homicides, the Public Prosecutor's Office specifically states that: (i) in 3 cases, it does not appear that any Social Economic Conflict was raised in the local Labour Court, nor was there any Collective Agreement negotiation or conflict related to union dues; (ii) in a fourth case, the trade union indicated that it was not aware that the victim had received threats and that no Social Economic Conflict was raised in the Labour Court nor was there any Collective Agreement negotiation; (iii) in a fifth case, no indication of a possible trade union motive has been identified; iv) in a sixth case, although a collective agreement was being negotiated in the company at the time of the events, the union indicated that the victim was not a member of either the union board or the negotiating committee; v) in a seventh case, the victim's membership of the union was under analysis because he had just been appointed to a new position (clerk) which was considered a position of trust; however, it was not possible to link the homicide to acts of threat or intimidation against union members; vi) in an eighth case, the victim had been retired for two years and eight months. In four of these cases, the Public Prosecutor's Office refers to the identification of other motives (passion in two cases, common crime in another, other unspecified motives in a fourth case). Finally, the Public Prosecutor's Office adds that the union has requested that the information gathered once the arrest warrant in force for one of the cases has been executed be used for the other investigations.

- 321.** In the same communication, the Government submits information from the Ministry of the Interior on the budget allocated to the Head of the Division of Protection of Persons and Security of the General Operations Sub-Directorate of the National Civil Police. The Ministry of Interior indicates that the initial budget allocated in Fiscal Year 2020 for this Division is 8,867,500.00 quetzales (US\$ 1,138,923.64).
- 322.** In its communication of 26 October 2020, the Government reports on the joint statement of 22 October 2020 made by the Ministry of Labour and Social Security, the Ministry of the Interior and the Public Prosecutor's Office on anti-union violence, in which these institutions commit themselves to: (i) ensuring smooth inter-institutional coordination to guarantee the fundamental rights of trade union leaders and members; (ii) seeking to increase and strengthen institutional capacities to achieve this objective; and (iii) promoting opportunities for dialogue with representatives of labour rights activists and the National Tripartite Commission. In the above-mentioned joint statement, the Public Prosecutor's Office adds that: (i) in November 2019 it created the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists; (ii) this unit has a central office, a unit for crimes against judicial officials and a unit for crimes against trade unionists and had at its disposal for the 2020 financial year a budget of 4,918,412 Guatemalan quetzals (approximately US\$618,500); (iii) the Prosecutor's Agency for Crimes against Trade Unionists has one head of unit, three prosecution officials, two prosecution officers, 16 assistant prosecution officers, or a team of 22 people compared to the 19 people that the Specialized Prosecutor's Office had in 2017; (iii) in order to prevent delays in the handling of cases, the Public Prosecutor's Office has established a comprehensive case management system; and (iv) has convened the Trade Union Technical Committee for 28 October 2020 and has scheduled five meetings of the committee for 2021.
- 323.** In the same statement, the Ministry of the Interior states that it is prepared to take all necessary steps to ensure the effective functioning of the Standing Trade Union Technical Committee on Comprehensive Protection and the Unit for the analysis of attacks against human rights advocates.
- 324.** In the same communication, the Government provides information on the content of the meeting held on 7 February 2020 between the Chief Public Prosecutor, Ms María Consuelo Porrás Argueta, and the National Tripartite Commission. The Government indicates in this regard that: (i) the National Tripartite Commission forwarded the Committee's latest report concerning the present case to the Chief Public Prosecutor; (ii) the National Tripartite Commission transferred the cases of homicides of members of the trade union movement highlighted by the Committee in paragraph 295 of its last report to the Chief Public Prosecutor, as well as the 12 cases identified by the labour sector, which had the support of the International Commission against Impunity in Guatemala, with a view to promptly identifying their perpetrators and instigators; (iii) a worker member of the Commission emphasized the need to make headway in identifying the instigators of the homicides of members of the trade union movement and highlighted the serious threats to which leaders and members of municipal trade unions were subjected. The Government notes that the Chief Public Prosecutor: (i) emphasized the importance of spreading the knowledge of General Directive No. 01-2015 for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists (hereinafter Directive No. 01-2015) in order to identify the perpetrators and instigators of the homicides; (ii) proposed the establishment of a preventive security committee for trade union leaders and members that would be composed of a representative of the



Public Prosecutor's Office, a representative of the Ministry of the Interior and a representative of the Ministry of Labour.

- 325.** The Government goes on to refer to: (i) the fact that the Trade Union Technical Committee ceased operating in February 2020 because worker representatives were no longer participating pending their response to the proposal made in February of a new working methodology; (ii) the holding of a new meeting of the National Tripartite Commission with the Supreme Court on 9 September 2020 at which the expediting of several court proceedings for the homicides of members of the trade union movement was discussed; (iii) the approval on 6 August 2020 by the National Tripartite Commission of the technical cooperation project "Strengthening of the National Tripartite Commission on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards", prepared by the Office, which includes, among its main points for action, the fight against anti-union violence.
- 326.** In its communication of 11 December 2020, the Government again forwards information provided by the Public Prosecutor's Office, which indicates that: (i) after several months of inactivity, due in particular to the COVID-19 pandemic, the Tripartite Trade Union Committee of the Public Prosecutor's Office met again on 28 October 2020 and five meetings were scheduled for 2021; (ii) a meeting is being coordinated with the Ministry of the Interior and the DEIC of the National Civil Police to comply with the Ministry of the Interior's protocol on human rights and, specifically, to appoint a person to coordinate the immediate implementation of the security protocol for members of the trade union sector at the national level; and (iii) training is planned for members of the Public Prosecutor's Office on Directive No. 01 2015.
- 327.** In its communications of 28 July and 30 September 2021, the Government forwards additional information provided by the Public Prosecutor's Office indicating that: (i) the Prosecutor's Office for Crimes against Judicial Officials and Trade Unionists has a current operating budget of 406,994 quetzals (GTQ) (equivalent to US\$52,560.93) for 2021. This information complements that contained in the communication of 26 October 2020, which reported a budget of GTQ4,918,412 (equivalent to US\$632,158.19); (ii) this unit of the Public Prosecutor's Office was assigned 23 persons to deal specifically with the issue of trade union members; (iii) the Trade Union Technical Committee held a meeting on 11 February 2021; (iv) the Public Prosecutor's Office issued invitations for meetings on 22 April, 24 June and 26 August, but these meetings did not take place because representatives of the trade union sector failed to attend and sent apologies; (v) the Public Prosecutor's Office has scheduled the next meeting of the Trade Union Technical Committee for 28 October 2021; and (vi) With regard to coordinating actions between the Public Prosecutor's Office and the Ministry of the Interior, the Criminal Investigation General Subdirectorates appointed Mr Armando Ajcapajá Cutz, a police assistant inspector, as the direct contact for the follow-up of cases involving crimes against the life and physical integrity of trade union leaders and members, with a view to undertaking the necessary coordination.
- 328.** In its communication of 28 July 2021, the Government also forwards information provided by the Ministry of the Interior, in which the Ministry states that: (i) the provision of training in collective labour rights for telephone operators of the 1543 helpline number for union members proposed by the Ministry of Labour would be appropriate; and (ii) the increase in the DEIC budget to deal specifically with cases of trade union leaders and members in coordination with the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists of the Public Prosecutor's Office can only be considered in the preliminary draft budget for the 2022 financial year.

- 329.** The Ministry of the Interior reports below on the number of security measures requested from 2019 to 31 May 2021 for trade union leaders and members. The Ministry of the Interior indicates that: (i) of 136 measures requested for trade union leaders and members, 131 measures were granted; (ii) of these 131 measures, 122 were perimeter measures, four were personal security measures and five measures consisted of providing a telephone number because a low level of risk had been identified. The Ministry of the Interior adds that it is continuing to implement the protocol for the implementation of immediate and preventive security measures for trade unionists. In its communication of 30 September 2021, the Government provides data focusing on measures to guarantee the security of members of the trade union movement taken between 1 January 2020 and 31 August 2021, indicating that: (i) 93 risk assessments were carried out during this period; and (ii) based on these assessments, 89 perimeter security measures and one personal security measure were granted. The Government adds that, in the same period, the 1543 emergency helpline number received three calls from trade union members reporting threats, which were referred to the Ministry of the Interior.
- 330.** In several of the above-mentioned communications, the Government provides updated information on investigations and court proceedings concerning specific cases of homicides of trade union leaders and members, as well as comprehensive data on the results achieved by the Public Prosecutor's Office and the courts in this regard. In its latest communications of 28 July and 30 September 2021, the Government reports that, according to data from the Public Prosecutor's Office, 96 cases of deaths of trade union leaders and members were recorded under the road map, six of which occurred in 2020. With regard to these 96 cases: (i) 28 judgments have been issued, including 22 convictions (concerning 19 homicides, with three cases each resulting in two convictions), five acquittals and one security and corrective measure; (ii) of the 22 convictions, 16 were handed down to perpetrators, five to instigators, three to both perpetrators and instigators, and in four cases the Public Prosecutor's Office did not provide the relevant information; (iii) in addition, three cases are currently at the public oral hearing stage and arrest warrants have been issued in seven cases; (iv) six cases in which the persons charged died have been dismissed; and (v) the remaining cases are still at the investigation stage.
- 331.** The Government states that the above data shows that, despite the impact of the COVID-19 pandemic: (i) two convictions have been handed down so far in 2021 (relating to the death of Mr Adolfo Ich Chamán and the murder of Mr Bruno Ernesto Figueroa) and one conviction in 2020 (relating to the murder of Mr Miguel Ángel Ramírez Enríquez); and (ii) in addition, progress was recorded in 2020 in the investigation of 13 homicides.
- 332.** By communications of 22 and 25 October 2021, the Government provides its observations on the allegations submitted by the complainant organisations on 14 October 2021. In relation to the allegation of several homicides committed in 2020 and 2021, the Government states that: (i) not all the victims of the reported homicides were members of the trade union movement; (ii) the homicides of union members Messrs Gerson Hedelman Ortiz Amaya, José Miguel Alay, Héctor David Xoy Ajujalip, Julio César Zamora Álvarez, and union leader Ms Cinthia del Carmen Pineda Estrada, are under investigation by the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists of the Public Prosecutor's Office; and (iii) it has requested information from the Public Prosecutor's Office on the other murders denounced in the abovementioned communication from the trade union organizations and in their communication addressed to the Governing Body in October 2020. Regarding the allegations of attacks and other acts of anti-union violence committed in 2020 and 2021, the Government provides information on three attacks and one case of threat and states

that two unions affected by the alleged acts have perimeter security measures in place. The Government adds that: i) information on the investigations related to the different cases denounced has been requested from the Public Prosecutor's Office; and (ii) however, the lack of data on the file numbers and other details makes it more difficult to locate the relevant information so that it would prove necessary to establish a contact with the complainants.

333. With regard to the allegations of the trade union organizations concerning the ineffectiveness and lack of will of the public authorities, the Government again submits information sent in previous communications and reaffirms the firm commitment of the Public Prosecutor's Office and the Ministry of the Interior to the fight against anti-union violence. It categorically denies any attempt on the part of the Executive Branch and the Congress of the Republic to hinder, through budgetary measures, the work of the Human Rights Prosecutor's Office. The Government adds that since its constitution in April 2018, the Subcommittee *on implementation of the Roadmap* has held 23 meetings (eight in 2018; five in 2019; six in 2020; and four as of 22 October 2021). In relation to the Trade Union Technical Committee of the Public Prosecutor's Office, the Government states that: (i) on 28 October 2020, 6 meetings of the Trade Union Technical Committee of the Public Prosecutor's Office have been scheduled until 28 October 2021; (ii) of the 5 meetings of that Committee that should have taken place to date, only 2 were held (11 February and 12 May); and (iii) in the other opportunities, the union representatives informed a few days before the meetings that they had other commitments scheduled.

## D. The Committee's conclusions

334. *The Committee recalls that, in the present case, the complainants report numerous murders and acts of violence against trade union leaders and members, as well as impunity in that regard.*
335. *While appreciating the detailed observations sent by the Government since the last examination of the case in communications dated 9 December 2019, 3 January, 27 January, 24 October, 26 October and 11 December 2020, and 1 February, 28 July, 30 September, 22 and 25 October 2021, the Committee continues to deeply deplore the numerous homicides of members of the trade union movement recorded since 2004 for which a judicial decision is still pending. The Committee notes with deep concern the Government's indication that the Public Prosecutor's Office has taken on six further cases of deaths of trade union members that occurred 2020. The Committee also notes in this regard that through a communication dated 14 October 2021, the complainant organisations allege that six members of the trade union movement have been murdered in 2020 and 2021 and denounce other serious acts of anti-union violence., The Committee once again draws the Government's attention to the fact that trade union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade union members, and that it is for Governments to ensure that this principle is respected [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 84]. The Committee takes due note of the Government's immediate response to the latest communication from the trade union organizations, which includes information on five homicides- which are currently under investigation-, three attacks and one case of threats against members of the trade union movement, as well as information on the implementation of security measures to two unions The Committee also takes note of the Government's indication that the lack of data on certain cases makes it more difficult to locate the relevant information so that it would prove necessary to establish a contact with the complainants. The Committee therefore requests the Government to contact and meet with the complainant organizations to facilitate the*

identification of all cases of anti-union violence reported by them in their last communication. The Committee requests the Government, on the basis of the above, to supplement the information provided, indicating the measures taken to investigate the facts denounced and to ensure the protection of members of the trade union movement who may be at risk.

### **Allegations of murders of members of the trade union movement and other acts of anti-union violence**

- 336.** *The Committee notes that the information provided by the Government in its various communications shows that, of the total of 96 homicides referred to by the Government: (i) 28 judgments have been issued to date, including 22 convictions (concerning 19 homicides, with three cases each resulting in two convictions), five acquittals, and one security and corrective measure; (ii) arrest warrants have been issued in seven cases; (iii) two cases are currently at the public oral hearing stage; (iv) six cases in which the persons charged died have been dismissed; and (v) the remaining cases are still at the investigation stage.*
- 337.** *The Committee takes particular note that, since its last examination of the case in October 2019, three new convictions with prison sentences have been handed down, one in 2020 for the homicide of Mr Miguel Ángel Ramírez Enríquez (Union of Banana Workers of the South) and two in 2021 for the homicides of Mr Adolfo Ich Chamán and Mr Bruno Ernesto Figueroa (National Union of Health Workers of Guatemala). The Committee also notes that the Public Prosecutor's Office this time indicates the extent to which the sentences handed down refer to the perpetrators and/or instigators. In this regard, the Committee notes that in the 28 judgments issued, 16 were with respect to perpetrators, five to instigators, three to both perpetrators and instigators, and in four cases the Public Prosecutor's Office did not provide the relevant information. The Committee further notes that, according to information provided by the Public Prosecutor's Office, progress was made in the investigation of 13 homicides in 2020.*
- 338.** *The Committee also notes that, for the first time, the Ministry of the Interior provides data on its contribution to the investigation of acts of anti-union violence, specifically indicating that: (i) it carried out field investigations into 19 assaults against trade union members, five of which resulted in the arrest of nine persons; and (ii) the Ministry of the Interior's Special Investigation Unit for the analysis of attacks against human rights advocates, whose investigations are aimed at preventing further crimes and thus protecting the lives of those affected, has recorded 223 cases of threats and assaults against members of the trade union movement, 29 of which are still at the investigation stage, the perpetrators having been identified in 106 cases. The Committee takes due note of these data and requests the Government to provide information on the punishments handed down to the perpetrators of the threats and assaults.*
- 339.** *The Committee further notes the information provided by the Government on the institutional initiatives taken to strengthen the criminal justice response to acts of violence against members of the trade union movement. In this respect, the Committee takes particular note of:*
- *The establishment in November 2019 of a new unit in the Prosecutor's Office for the Investigation of Crimes against Judicial Officials and Trade Unionists. The Committee takes due note in this respect of the Public Prosecutor's Office's indication that the entity concerned includes a Special Prosecutor's Unit for Crimes against Trade Unionists and that the number of persons assigned to this Special Prosecutor's Unit (23) has increased compared to 2017 (19).*

- *The active role played by the National Tripartite Commission and its subcommittee on implementation of the road map in monitoring the criminal justice response to acts of anti-union violence. The Committee takes particular note in this respect of the high-level meetings held by the National Tripartite Commission with the Chief Public Prosecutor and the plenary of the Supreme Court to exchange views on the effectiveness of the steps taken to identify and punish the perpetrators of crimes against members of the trade union movement. The Committee also takes due note of the fact that the subcommittee on implementation of the road map specifically requested the relevant authorities to: (i) conduct thorough investigations into all the cases of homicides of members of the trade union movement, placing emphasis on a number of cases of particular relevance; (ii) reactivate the Trade Union Technical Committee of the Public Prosecutor's Office and the Standing Trade Union Technical Committee on Comprehensive Protection; (iii) ensure the judiciary expedites the court proceedings for the homicides of members of the trade union movement); (iv) assign a criminal analysis unit to the Special Prosecutor's Unit for Crimes against Trade Unionists; and (v) strengthen cooperation between the Public Prosecutor's Office and the Ministry of the Interior in the event members of the trade union movement request protection measures.*
- *The joint statement of 22 October 2020 made by the Ministry of Labour and Social Security, the Ministry of the Interior and the Public Prosecutor's Office on anti-union violence, in which these institutions commit themselves to: (i) ensuring smooth inter-institutional coordination to guarantee the fundamental rights of trade union leaders and members; (ii) seeking to increase and strengthen institutional capacities to achieve this objective; and (iii) promoting opportunities for dialogue with representatives of labour rights activists and the National Tripartite Commission.*
- *The partial resumption of the activities of the Trade Union Technical Committee of the Public Prosecutor's Office that met on 7 February 2020, 28 October 2020, 11 February and 12 May 2021, with the Government stating several reasons for not holding other scheduled meetings (lack of response from trade union representatives regarding the proposal for a new working methodology in 2020, COVID-19 pandemic and non-attendance of trade union representatives to three meetings in 2021).*

**340.** *The Committee welcomes the level of detail of the information provided by the Government. The Committee takes due note of the institutional initiatives mentioned in the paragraph above and welcomes in particular the consolidation and development of the role played by the National Tripartite Commission and its subcommittee on implementation of the road map in the regular and detailed monitoring of the steps taken to clear up and punish the numerous acts of anti-union violence which are the subject of the present case. The Committee stresses in particular the importance of: (i) the high-level substantial discussions held by the National Tripartite Commission with the Chief Public Prosecutor and the plenary of the Supreme Court, and expresses the hope that the high-level authorities of the Ministry of the Interior will also take part in these discussions; (ii) the specific requests addressed to the Public Prosecutor's Office, the Ministry of the Interior and the judiciary to improve the effectiveness of investigations, promote inter-institutional collaboration and expedite court proceedings; and (iii) the identification of 36 cases of homicide which, according to the National Tripartite Commission, require special attention (these cases include 20 homicides identified by the Committee in its previous reports [see in this regard the Committee's 391st Report, para. 295] and 12 cases in which the International Commission against Impunity in Guatemala was involved in the investigation). The Committee also welcomes the strong commitment expressed by the Public Prosecutor's Office, the Ministry of the Interior and the Ministry of Labour and Social Security in their joint statement of 22 October 2020 on anti-union violence and trusts that this will continue to be translated into specific initiatives. The Committee also*



*notes that, despite the additional challenges created by the COVID-19 pandemic, the investigative work of the Public Prosecutor's Office has not been halted and the courts have been able to hand down three additional convictions since January 2020.*

- 341.** *At the same time, the Committee has to note that: (i) the vast majority of the homicides of trade union leaders and members examined in the present case have still not resulted in a conviction (out of a total of 96 homicides, there are currently 23 convictions – including the one handing down security and corrective measures – referring to 20 homicides, as three homicides resulted in several convictions), the number of homicides for which the instigators have been identified being even lower (8); (ii) of the 36 homicides identified as of significant importance by the National Tripartite Commission, only six have resulted in convictions, despite the length of time that has elapsed since the crimes were committed; (iii) with the exception of the Union of Commercial Workers of Coatepeque and including in relation to the homicides of SITRABI members for which the Public Prosecutor's Office has provided information on the status of eight cases the Committee still has no evidence that any connections have been made between the investigations into the various homicides of members of the same trade union organization; and (iv) although the competent authorities refer to the existence of collaboration between the DEIC of the National Civil Police and the Public Prosecutor's Office in carrying out the investigations, this appears to be limited to a small number of cases.*
- 342.** *The Committee therefore takes due note, on the one hand, of the steps taken by the Government, the significant development of social dialogue on the issue of anti-union violence and the further results reported despite the additional difficulties caused by the COVID-19 pandemic, while, on the other hand, maintaining its deep concern about the high level of impunity that prevails in relation to the allegations of numerous homicides and acts of anti-union violence reported under this complaint. In light of the foregoing, the Committee once again urges the Government, with the active participation and monitoring by the National Tripartite Commission and its subcommittee on implementation of the road map, to continue to take and intensify all the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of the acts, taking the trade union activities of the victims fully into consideration in the investigations, in accordance with Directive No. 01-2015. In this connection, the Committee specifically urges the Government to: (i) take all necessary measures to ensure the continued role of the National Tripartite Commission and its subcommittee on implementation of the road map; (ii) facilitate, with the support of the National Tripartite Commission, the complete reactivation of the trade union committees of the Public Prosecutor's Office with the full participation of its trade union representatives; (iii) significantly increase, with the allocation of the necessary human and financial resources, the criminal investigation capacities of the Special Prosecutor's Unit for Crimes against Trade Unionists; (iv) substantially strengthen collaboration between the Special Criminal Investigation Division (DEIC) of the National Civil Police and the above-mentioned special prosecutor's unit; (v) take the necessary measures to ensure that the competent authorities devote the attention and resources required for the investigations into the 36 homicides reported by the National Tripartite Commission; and (vi) continue the ongoing dialogue established with the judiciary to ensure, through all appropriate mechanisms, that cases of anti-union violence are promptly examined by the criminal courts. The Committee requests the Government to keep it informed in this respect.*

### **Protection of members of the trade union movement who may be at risk**

- 343.** *In its previous examinations of the present case, the Committee had noted, in a context of frequent acts of anti-union violence, the low number of personal security measures granted*



to members of the trade union movement compared to the high number of requests recorded. The Committee had also called for the reactivation of the trade union committees of the Ministry of the Interior and its Unit for the analysis of attacks against human rights advocates; for increased collaboration between the Ministry of the Interior and the Public Prosecutor's Office to ensure adequate protection for members of the trade union movement who may be at risk; and for special attention to be paid to the threats to which the leaders of several municipal trade unions were subjected.

- 344.** *The Committee takes note of the updated information from the Government on the processing of security measures requested by members of the trade union movement from 2019 to 31 May 2021, indicating that: (i) the Ministry of the Interior received 136 requests and granted 131 security measures; and (ii) of these 131 measures, 122 were perimeter measures, four were personal security measures and five measures entailed providing a telephone number as a low level of risk had been identified. The Committee further notes that, between 1 June and 31 August 2021, 19 risk assessments were carried out on members of the trade union movement and 15 perimeter security measures were granted. The Committee also takes note of the information provided by the Government on the overall budget allocated to the Protection of Persons and Security Division of the Sub-Directorate General of Operations of the National Civil Police (approximately US\$ 1,139,000 for the fiscal year 2020).*
- 345.** *The Committee also notes that it appears from the other information provided by the Government that: (i) the mechanisms for granting security measures to members of the trade union movement and coordination in this regard between the Ministry of the Interior and the Public Prosecutor's Office have been the subject of substantial discussions before the subcommittee on implementation of the road map; (ii) despite the request of the subcommittee, the Standing Trade Union Technical Committee on Comprehensive Protection of the Ministry of the Interior has not been reactivated, which would require the adoption of new regulations by the Ministry; (iv) the worker members of the National Tripartite Commission continue to warn of the ongoing risk to leaders of several municipal trade unions; and (v) the Chief Public Prosecutor has proposed to the National Tripartite Commission that a preventive security committee be established for trade union leaders and members, which would be composed of a representative of the Public Prosecutor's Office, a representative of the Ministry of the Interior and a representative of the Ministry of Labour.*
- 346.** *The Committee takes due note of the detailed information provided by the Government. In the above-mentioned context of frequent acts of anti-union violence, and while noting the new proposal made by the Chief Public Prosecutor for improving the effectiveness of mechanisms to prevent acts of anti-union violence, the Committee expresses its concern at the continued absence of a forum for dialogue between the Ministry of the Interior and trade union organizations to coordinate the protection measures needed by trade union members who may be at risk. With regard to the non-functioning of the Unit for the analysis of attacks against human rights advocates, the Committee notes that the United Nations High Commissioner for Human Rights indicated in her report of February 2021 on the situation of human rights in Guatemala that "the loss of this key space for coordination and information exchange heightens the vulnerability of human rights activists to attacks" (report A/HRC/46/74). The Committee also notes, as highlighted in its latest examinations of the case, that a very limited number of personal protection measures (4) granted to members of the trade union movement who may be at risk are still in place compared to the high number of perimeter security measures (122), despite indications from trade union organizations that the latter are allegedly ineffective [see the report of the tripartite mission that took place in Guatemala from 26 to 29 September 2018 (GB. 334/INS/9 (Rev.), para. 18)].*

**347.** *Recalling once again that trade union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade union members, and that it is for Governments to ensure that this principle is respected [see **Compilation**, para. 84], and reiterating its deep concern at the new cases of deaths of members of the trade union movement registered with the Public Prosecutor's Office and occurring in 2020 and 2021, the Committee once again urges the Government, with the active participation and monitoring of the National Tripartite Commission and its subcommittee on implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Ministry of Interior's Unit for the analysis of attacks against human rights advocates; (ii) achieve full and effective coordination between the Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government keep it informed in this respect, paying particular attention to the situation of members of municipal trade unions who may be at risk.*

## The Committee's recommendations

**348.** **In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**

- (a) **The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity. The Committee urges the Government to take all necessary measures to prevent the commission of any further acts of anti-union violence.**
- (b) **The Committee again urges the Government, with the active participation and monitoring by the National Tripartite Commission and its subcommittee on implementation of the road map, to continue to take and intensify all the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations, in accordance with Directive No. 01-2015. In this connection, the Committee specifically urges the Government to: (i) take all necessary measures to ensure the continued role of the National Tripartite Commission and its subcommittee on implementation of the road map; (ii) facilitate, with the support of the National Tripartite Commission, the full reactivation of the trade union committees of the Public Prosecutor's Office with the full participation of its trade union representatives; (iii) significantly increase, with the allocation of the necessary human and financial resources, the criminal investigation capacities of the Special Prosecutor's Unit for Crimes against Trade Unionists; (iv) substantially strengthen collaboration between the Special Criminal Investigation Division (DEIC) of the National Civil Police and the above-mentioned special prosecutor's unit; (v) take the necessary measures to ensure the competent authorities devote the attention and resources required for the investigations into the 36 homicides reported by the National Tripartite Commission; and (vi) continue the ongoing dialogue established with the judiciary to ensure, through all appropriate mechanisms, that cases of anti-union violence are promptly examined by the criminal**

courts. The Committee requests the Government to keep it informed in this respect.

- (c) The Committee requests the Government to provide information on the punishments handed down to the perpetrators of threats and assaults against members of the trade union movement identified by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates.
- (d) Expressing its deep concern at the new cases of deaths of members of the trade union movement registered with the Public Prosecutor's Office and occurring in 2020 and 2021, the Committee once again urges the Government, with the active participation and monitoring of the National Tripartite Commission and its subcommittee on implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Ministry of Interior's Special Investigation Unit for the analysis of attacks against human rights advocates; (ii) achieve full and effective coordination between the Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government keep it informed in this respect, paying particular attention to the situation of members of municipal trade unions who may be at risk.
- (e) The Committee requests the Government to contact and meet with the complainant organizations to facilitate the identification of all cases of anti-union violence they reported in their last communication. The Committee requests the Government, on the basis of the above, to supplement the information provided, indicating the measures taken to investigate the facts denounced and to ensure the protection of members of the trade union movement who may be at risk.
- (f) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

## Case No. 3139

Report in which the Committee requests to be kept informed of developments

### Complaint against the Government of Guatemala presented by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG)

**Allegations: The complainant organization alleges multiple anti-union acts against the leaders of the MSICG and several member organizations, and the lack of effective protection by the competent authorities**

- 349.** The complaint was presented in communications dated 16, 18 and 19 June 2015, 24 July 2015, 9 November 2015, 1 and 5 May 2016, 5 January 2017, 12 and 14 February 2017, and 1 and 5 May 2018, by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG).
- 350.** The Government sent its observations in communications dated 18 January 2016, 25 April, 6 May, 26 September 2019, and 3 January 2020, 21 July 2021 and 29 September 2021.
- 351.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective *Bargaining* Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154).

#### A. The complainant's allegations

- 352.** In its communications dated 18 June and 24 July 2015, 5 March 2016 and 5 January 2017, the complainant organization states that, in light of the clear lack of political will of the Human Rights Ombudsman to directly negotiate a collective agreement on working conditions, on 20 November 2014, socio-economic collective dispute No. 01173-2014-07016 was presented before the courts by its member organization, the Union of Workers at the Office of the Human Rights Ombudsman (SITRAPDH). The complainant organization alleges that, in *the* context of this collective dispute, a whole series of acts of violence was initiated against SITRAPDH, its members and trade union leaders, by the Human Rights Ombudsman, Mr Jorge Eduardo de León Duque, his Deputy Ombudsman, and another official from the Office of the Human Rights Ombudsman, which led to acts of criminalization, stigmatization and harassment. It alleges that the Human Rights Ombudsman continued to act against the complainant organization, denying it the right to carry out trade union activities and represent trade union organizations.
- 353.** In its communication of 19 June 2015, the complainant organization alleges that death threats were made against three trade union leaders by their employers' organizations: the leader of the complainant organization, Mr Efrén Sandoval, and the leaders of two of its members: Public Relations Secretary at the Trade Union of Gas Bottling, Transport,

Distribution and Maintenance Workers (SINTETDM.GAS), Mr Augusto Zicinio Morales, and the Secretary-General of the Unite for Change National Union of Autonomous Sports Confederation Workers (SNUCTCDAG), Ms María Lizette Alburez Guevara de Santandrea, in August 2014, and in March and April 2015, respectively. The complainant organization indicates that, although complaints were filed with the Office of the Public Prosecutor, the facts have not been clarified.

- 354.** In its communication of 24 July 2015, the complainant organization alleges that Ms Lesbia Amézquita, a lawyer from SITRAPDH, was followed by two masked men on motorcycles with the possible intention of shooting her, and indicates that SITRAPDH filed a complaint with the Office of the Public Prosecutor in order for the facts to be investigated. It alleges that a prosecutor from the unit investigating crimes against trade unionists informed the employers' organization that a complaint had been filed against it, revealing that the persons who had signed the complaint were trade union leaders, Ms Marilyn Roxana Girón Palacios and Ms Glenda Azucena Escobar. The two trade union leaders were later informed of a disciplinary procedure with the aim of dismissing them, on the grounds that they had attended a workplace at the request of their members.
- 355.** In its communications of 9 November 2015 and 1 May 2016, the complainant organization indicates that, by means of first and second instance rulings, the Combined Pluripersonal Court of First Instance for Labour and Social and Economic Welfare of the Department of Quetzaltenango (rulings of 27 February 2015) and the Court of Appeals for Labour and Social Welfare (rulings of 21 July 2015) ordered the reinstatement of the workers dismissed for having participated in the formation of SITRAPDH. It alleges that, on several occasions, the Office of the Human Rights Ombudsman refused to comply with the aforementioned final court rulings on the reinstatement of the dismissed workers. It also alleges that the acts of anti-union harassment by the Office of the Human Rights Ombudsman have influenced other civil society stakeholders and, in particular, have led many NGOs to take a stand against the MSICG.
- 356.** In its communication of 12 February 2017, the complainant organization alleges that SITRAPDH filed a complaint against the Office of the Human Rights Ombudsman. It indicates that the complaint was referred to the unit investigating crimes against trade unionists, and then to the unit investigating crimes against human rights activists. However, it maintains that no file has been processed, which constitutes a violation of due process and alleged collusion between the Human Rights Ombudsman and the Attorney-General. On 6 January 2017, the criminal judge dismissed the proceedings, a decision against which the trade union filed an appeal for *amparo* (protection of constitutional rights). In a communication dated 1 February 2018, the complainant organization reiterates that, on several occasions, it reported to the Office of the Public Prosecutor that, for over seven years, the prosecutor had retained dozens of cases in his possession, without completing the relevant investigations, in order to guarantee impunity concerning the offences committed against the members of the complainant organization.
- 357.** In its communication of 14 February 2017, the complainant organization alleges that other acts of intimidation and anti-union dismissals were carried out against SINTETDM.GAS. It indicates, in particular, that, despite the fact that legal decisions issued by the Sixth Pluripersonal Court of First Instance for Labour and Social Welfare ordered the reinstatement of five trade union leaders, the employers' organization refused to pay the wages and other benefits that had not been received in the period between the dismissal of the trade union leaders and their actual reinstatement. The complainant organization alleges that the employers' organization often increases the number of

procedures to delay the payment of entitlements, and that there have been new cases of anti-union dismissals and new acts of violence.

- 358.** In its communication of 5 January 2017, the complainant organization alleges that the Government and the employer sector, through a nationwide press campaign, have stigmatized and criminalized freedom of association and collective bargaining, and have stigmatized the lawyers responsible for defending, before the courts, workers who exercise their rights to freedom of association and collective bargaining.
- 359.** The complainant organization alleges that the attack in the media took place after the aforementioned acts of retaliation and violence, as a result of the issue of collective bargaining being raised before the labour courts by SITRAPDH. It indicates that this situation began with a press release in which the complainant organization was used to attack the Office of the Human Rights Ombudsman for its investigations of the deaths of renal patients from the Guatemalan Institute of Social Security (IGSS) and the enterprise, PISA. It underscores that this is not the first time that “dubious characters” have used the complainant organization to destabilize national institutions, which has led to the discredit of its leaders and defenders.
- 360.** The complainant organization alleges that, on 26 May 2015, the social media outlet *La Hora* published a press release in which Ms López David announced that the negotiation of a new collective agreement with workers had been stalled due to “interference, manipulation, distortion and blackmail” by the MSICG.
- 361.** The complainant organization also alleges that, on 5 June 2015, the Human Rights Ombudsman convened an institutional press conference, during which statements were made against it. These statements implied that the MSICG was a criminal organization, with the aim of discouraging trade union membership and collective bargaining, and criminalized Ms Amézquita in an abusive manner, by insinuating that she had appropriated 29 million quetzals (GTQ), which jeopardized her safety. According to the complainant organization, these statements were published in June 2015 by the daily newspaper *Prensa Libre* (hereinafter “the daily newspaper”), which is the most widely circulated national newspaper.
- 362.** The complainant organization underscores that the media campaign created high levels of public disgust at and hatred towards trade unionism, and even served as an argument, in some institutions, to prevent the formation of trade unions or weaken and destroy existing ones. It alleges that all these statements aimed to portray the complainant organization and its leaders as being part of criminal structures, as being dishonest trade union leaders, and as having political interests against the Human Rights Ombudsman, but above all, to coerce them into ceasing to defend the workers of the Office of the Human Rights Ombudsman.
- 363.** The complainant organization adds that, while the special unit investigating impunity attached to the International Commission against Impunity provided documentation that dissociated Ms Amézquita and Mr Sandoval from criminal structures in the IGSS-PISA case, they were denied the publication of their right to clarification, and therefore both individuals decided to appeal to judges of the peace, who declined to hear the case, claiming that a criminal proceeding must be initiated in order to gain access to the right to clarification. It indicates that, although the Constitutional Court rulings of 7 January and 4 February 2016 ordered the courts to rule in accordance with the law and to require the daily newspaper to publish the rights to reply and, in the case of Ms Amézquita, the Court of First Instance for Labour Appeals, these rulings were not followed up.



- 364.** In a communication dated 5 February 2018, the complainant organization alleges that, despite a Constitutional Court decision issued on 8 November 2017 in favour of Mr Sandoval, the daily newspaper has yet to publish the right to reply and to clarification. It highlights that the right to clarification of Ms Amézquita is still pending a decision by the Constitutional Court. The complainant organization alleges that, at the beginning of February 2018, it had been almost three years since the rights to reply of SITRAPDH, Ms Amézquita and Mr Sandoval should have been published by the daily newspaper. It also alleges that these rights are now ineffective as the impact of the acts of criminalization, stigmatization and violence brought about by the daily newspaper against the complainant organization, SITRAPDH and Ms Amézquita and Mr Sandoval has been integrated by the public and has caused the damage intended, with serious consequences for SITRAPDH, Ms Amézquita and Mr Sandoval and their families, the members of the complainant organization and its leaders, and the right to freedom of association and collective bargaining.
- 365.** The complainant organization further alleges that the publications promoted by the Government of Guatemala through the Office of the Human Rights Ombudsman are being used by the Government before the Court of Honour of the Guatemalan Bar Association as evidence to call for the disbarment of Ms Amézquita, which would leave workers defenceless before the country's courts. Regarding the disbarment process, the complainant organization indicates that, at the beginning of 2018, the complaint filed had still not been resolved.

## B. The Government's reply

- 366.** In its communications of 18 January 2016 and 25 April 2019, the Government forwards the reply from the Office of the Human Rights Ombudsman, which indicates that it respects freedom of association, and that the Office of the Human Rights Ombudsman is not interfering and has not interfered in the formation and application for registration of SITRAPDH. It states that the claim that the founding members of SITRAPDH were subject to acts of violence, threats, stigmatization, criminalization and dismissal, is false. It underscores that the persons who were dismissed were fully aware of the disciplinary procedures carried out against each one of them for misconduct, which were initiated before the date on which they indicated that they were joining the trade union.
- 367.** Concerning the reinstatements ordered by the competent judicial authorities, the Office of the Human Rights Ombudsman indicates that it reinstated the seven workers concerned on 18 January 2016. However, these persons did not agree and took a series of actions, which meant that they only returned to their posts on 22 July 2016. The Office of the Human Rights Ombudsman also states that the claim that it refused to comply with any court ruling is completely false. It explains that when it tried to proceed with reinstatement, on several occasions, it was unable to do so, as provisional *amparo* had been granted in favour of the Office of the Human Rights Ombudsman as part of the labour reinstatement proceedings brought before the Combined Pluripersonal Court of First Instance for Labour and Social and Economic Welfare of the Department of Quetzaltenango. In its communication of 29 September 2021, the Government confirms that the reinstatement of the dismissed workers for having participated in the formation of SITRAPDH was ordered by the rulings of 27 February 2015 of the Combined Pluripersonal Court of First Instance for Labour and Social and Economic Welfare of the Department of Quetzaltenango, which were confirmed on 21 July 2015 by the Court of Appeals for Labour and Social Welfare. The Government describes the different legal proceedings related to the dismissals, and confirms that the seven workers were

reinstated on 22 July 2016. It also reports that on 21 March 2017, the Constitutional Court confirmed the decision of 21 July 2015 by the Court of Appeals for Labour and Social Welfare.

- 368.** Regarding its alleged refusal to negotiate a collective agreement on working conditions, the Office of the Human Rights Ombudsman states that it has always demonstrated full openness, good faith and willingness with regard to reaching agreements and improving working conditions and benefits for all workers in the institution, where budgetary possibilities so allow. It indicates that substantial agreements were reached during the negotiations, and the trade union representatives were the ones who decided to leave the table.
- 369.** As regards the alleged acts of violence by the Office of the Human Rights Ombudsman and other authorities, the Office of the Human Rights Ombudsman indicates that, although the complainant organization and Ms Amézquita appealed to the different instances of the judicial body, filing complaints concerning the alleged events, the reality is that, each and every one of the complaints were gradually dispelled, precisely because they lacked veracity and therefore, were perceptions of that organization alone, or were a flawed strategy to air labour issues in other judicial spheres. Concerning the actions by Ms Shaw Arrivillaga, it indicates that it has nothing to say, as this remains an internal matter for the trade union.
- 370.** In its communication of 6 May 2019, the Government provides information on the alleged misconduct of the prosecutor responsible for the cases against the trade unionists during the investigation of the allegations against the Office of the Human Rights Ombudsman. It indicates that a series of administrative complaints, which were filed with the Office of the Public Prosecutor by leaders and members of the complainant organization, and by Ms Amézquita, against the aforementioned prosecutor, were determined to be unjustified, as it was considered that there was no liability that would justify the existence of administrative misconduct. The Government also states that: (i) by means of a decision dated 22 July 2015, the Third Criminal Court of First Instance Responsible for Narcotics Offences and Crimes against the Environment ordered the appointment of a new prosecutor and/or investigation unit to address an action brought by Ms Amézquita; (ii) in view of the clearly hostile situation that had arisen, the aforementioned prosecutor requested that he be removed from the investigation of all of the files of the MSICG; (iii) by means of a decision dated 21 October 2015, the Office of the Public Prosecutor accepted the request, and all the cases in which Ms Amézquita or other members of the complainant organization were listed as an advisor, aggrieved party and/or defendant were transferred to the Investigation Unit of the Office of the Public Prosecutor for Human Rights.
- 371.** Concerning the alleged death threats and other offences, the Government, in its communications of 26 September 2019, 21 July 2021 and 29 September 2021, reports on the status of some of the complaints filed with the Office of the Public Prosecutor. It indicates that: (i) Case No. MP001-2015-22417, brought by Ms Amézquita regarding death threats and an attempted break-in at the premises of the complainant organization, is still being investigated; (ii) Case No. MP001-2012-93837, in which Ms Amézquita and Mr Sandoval claimed threats, was dismissed on 31 May 2018; (iii) Case No. MP001-201479599, in which Mr Sandoval alleged coercion and threats resulting from actions taken by the complainant organization, was dismissed on 26 October 2016; (iv) Case No. MP001-2015-30301, brought by Mr Morales regarding offences of coercion and threats, was dismissed on 7 February 2020; (v) Case No. MP001-2015-39511, brought by Ms Guevara de Santandrea regarding offences of coercion and threats, was dismissed

on 20 June 2019; (vi) Case No. MP001-2014-49103, in which four members of the complainant organization, Mr Walter Astulfo Golcher Rivera, Mr Luis Alfredo Alvarado Estrada, Mr José Luis Alvarado García and Mr Emilio Rolando López, made allegations of coercion, was dismissed on 28 September 2018; and (vii) Case No. MP001-2015-57671, brought by Mr Sandoval regarding offences of failure to report was dismissed, rulings violating the Constitution, breach of public duty, falsification of facts and collusion.

- 372.** Concerning the claim that the daily newspaper has still not published the right to reply and clarification, the Government reports that Mr Sandoval submitted a petition to the Third Chamber of the Civil and Commercial Court of Appeals, requesting assistance with the enforcement of the ruling of 8 November 2017 delivered by the Constitutional Court. However, it was determined that the contested authority had already ruled in favour of Mr Sandoval by not hearing an appeal lodged by the daily newspaper. The Government also indicates that, as a result of his disagreement with the decision, Mr Sandoval filed an appeal with the Constitutional Court, which was dismissed on procedural grounds by a ruling handed down on 30 August 2018. In its communication of 29 September 2021, the Government also indicates that a decision of 16 March 2017 by the Sixth Judge of Civil Peace of the municipality and department of Guatemala, which set a deadline of five days for the publication of the right to reply and clarification of Ms Amézquita, was confirmed by the Second Civil Judge of First Instance of the department of Guatemala on 16 August 2017 and by the Constitutional Court on 22 May 2018.
- 373.** With regard to the disbarment of Ms Amézquita, a lawyer for the complainant organization, the Government indicates, in its communication of 3 January 2020, that Ms María Luisa Durán Marín filed the corresponding complaint, which is currently pending before the Guatemalan Bar Association. The Government reports that this complaint stems from a series of criminal offences involving false allegations, calumny, threats, defamation and violence against women. The complaint also alleges that Ms Amézquita, under the auspices of the complainant organization, habitually makes repeated and unfounded complaints and allegations to the ILO Committee on Freedom of Association, against the Government of Guatemala and its various institutions and public and civil servants which hinder the achievement of her lucrative objectives and petty personal interests. With respect to the above, the Government maintains that the Committee does not have the authority to interpret the scope of national legislation, and that the jurisdiction of the courts is a matter for national legislation.

## C. The Committee's conclusions

- 374.** *The Committee observes that, in this case, the complainant organization alleges: (i) multiple anti-union acts of which the leaders of the MSICG and various member organizations were reportedly victims, and the lack of effective protection by the competent authorities; and (ii) the failure to comply with court orders to reinstate leaders and members from two trade unions that are affiliates of the MSICG. The Committee notes that the majority of the allegations are related to the conflict between the Office of the Human Rights Ombudsman on the one hand and SITRAPDH and the MSICG on the other. The Committee notes that the Government and the Office of the Human Rights Ombudsman deny the allegations, and that the Government indicates that most of the actions brought by the MSICG were dismissed by the competent authorities as unfounded.*
- 375.** *The Committee notes that the allegations by the complainant organization refer firstly to a series of acts of anti-union harassment that were reportedly committed by the Office of the Human Rights Ombudsman against SITRAPDH and the MSICG due to unsuccessful negotiations on the signing of a collective agreement and the subsequent referral of the*

collective dispute to the labour courts by the trade unions. The Committee notes that the organization specifically alleges that: (i) a series of acts of criminalization and stigmatization were committed by the Office of the Human Rights Ombudsman against SITRAPDH, its members, leaders and defenders, in particular Ms Amézquita; (ii) the Attorney-General and the prosecutor from the unit investigating crimes against trade unionists colluded with the Office of the Human Rights Ombudsman; (iii) the aforementioned prosecutor retained dozens of cases brought by the MSICG without carrying out the corresponding investigations; and (iv) other civil society stakeholders, including numerous NGOs, have taken a stand against the MSICG due to the harassment campaign carried out by the Office of the Human Rights Ombudsman. The Committee also notes the Government's indications that: (i) the Office of the Human Rights Ombudsman states that all the complaints brought before the courts by the complainant organization against the Office of the Human Rights Ombudsman have been dismissed due to their lack of veracity; (ii) following a court decision that ordered, with regard to a specific file, the appointment of a new prosecutor and/or investigation unit, and due to a request in this regard from the prosecutor himself, the Office of the Public Prosecutor decided that all the cases involving persons belonging to the complainant organization would be transferred to the Investigation Unit of the Office of the Public Prosecutor for Human Rights; and (iii) a series of administrative complaints lodged with the Office of the Public Prosecutor by leaders and members of the complainant organization, and by Ms Amézquita, against the aforementioned prosecutor, were determined unjustified.

- 376.** The Committee also notes that the complainant organization alleges that death threats were made against leaders of the MSICG, SINTETDM.GAS and SNUCTCDAG, and states that the facts were not clarified despite the filing of the corresponding complaints with the Office of the Public Prosecutor. The Committee notes the Government's indications that: (i) six complaints of offences of coercion and threats, which were filed by the complainant organization and its members, were dismissed by decisions of the court (four) and of the Office of the Public Prosecutor (two) of 4 April and 26 October 2016, 31 May and 28 September 2018, 20 June 2019 and 7 February 2020; and (ii) a complaint concerning threats and attempted break-in at the premises of the complainant organization filed by Ms Amézquita is still being investigated by the Office of the Public Prosecutor.
- 377.** The Committee duly notes the elements provided by the complainant organization and the Government. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of such organizations and it is for governments to ensure that this principle is respected [see **Compilation of decisions of the Committee on Freedom of Association**, Sixth edition, 2018, para. 84]. The Committee also recalls that it is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated, and underscores that the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators [see **Compilation**, para. 102]. Based on the above, and recalling the high number of situations of anti-union violence in the country that are being examined in other cases [see in particular Case No. 2609, paragraphs 307 to 348 of this report], the Committee urges the Government to: (i) ensure that all the necessary measures have been taken to guarantee the safety of the leaders of the MSICG, SINTETDM.GAS and SNUCTCDAG who are at risk; and (ii) the necessary measures are taken to complete, without delay, the investigation that is under way regarding the allegations of threats and an attempted break-in at the premises of the complainant organization, which were made by Ms Amézquita.

378. *The Committee further notes that the complainant organization denounces a media campaign stigmatizing and criminalizing freedom of association and collective bargaining, carried out by the Office of the Human Rights Ombudsman and the Government, which was supported by the employer sector. It notes that the complainant organization alleges that: (i) in the national print media, several statements from the Office of the Human Rights Ombudsman and other civil servants from this institution were published, in which the MSICG was blamed for the labour dispute with the Office of the Human Rights Ombudsman, as well as other articles that linked the MSICG and its leaders, and Ms Amézquita and Mr Sandoval, to criminal organizations; (ii) although the special unit investigating impunity dissociated the aforementioned leaders from the criminal structures mentioned in statements published in one of the country's main daily newspapers, the two trade union leaders were denied the publication of their right to clarification; (iii) despite the decision of 8 November 2017 of the Constitutional Court in favour of Mr Sandoval, this right has yet to be published; and (iv) the aforementioned media campaign has created a high level of hatred towards trade unionism and has endangered the safety of the aforementioned trade union leaders. The Committee notes the Government's indications that: (i) Mr Sandoval requested the assistance of the Civil and Commercial Court of Appeals with the enforcement of the ruling of the Constitutional Court, and that the Court of Appeals considered that it had provided Mr Sandoval with sufficient assistance by rejecting an appeal filed by the daily newspaper against the recognition of the right to reply; (ii) Mr Sandoval challenged the Court of Appeal's decision before the Constitutional Court, and his appeal was dismissed on procedural grounds; and (iii) in a ruling of 22 May 2018, the Constitutional Court confirmed a decision ordering the publication of the right to reply and clarification of Ms Amézquita. The Committee recalls that the right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Compilation**, para. 239]. Taking into account the gravity of the allegations concerning the statements published against the complainant organization in the media, the Committee underscores the importance for effect to be given to the right to reply recognized by the Constitutional Court. The Committee therefore requests the Government to ensure effective compliance with the Constitutional Court decision on the publication of the rights to clarification of Mr Sandoval and Ms Amézquita respectively. The Committee requests the Government to keep it informed in this regard.*
379. *The Committee further notes that the complainant organization alleges that a complaint was filed before the Court of Honour of the Guatemalan Bar Association against Ms Amézquita, and that the aforementioned publications in the media were used by the Government as an argument to call for her to be disbarred. The Committee also notes that the Government, in its reply, indicates that the complaint, which was filed by another lawyer and which is currently being resolved, stems from a series of criminal offences involving false allegations, calumny, threats, defamation and violence against women, and the habit of filing repeated and unfounded complaints with the ILO Committee on Freedom of Association against the Government of Guatemala and its different institutions, and public and civil servants. While it underscores that the trade union leaders cannot claim immunity under ordinary laws, the Committee recalls that professional organizations of workers and employers should under no circumstances be subjected to retaliatory measures for having exercised their rights arising from ILO instruments on freedom of association, and especially for having lodged a complaint before the Committee on Freedom of Association [see **Compilation**, para. 720]. The Committee requests the Government to ensure, within its competence, that it fully applies this principle and that the decision relating to the complaint lodged against Ms Amézquita in this regard, does not constitute retaliation for her trade union activities. The Committee requests the Government to keep it informed in this regard.*



- 380.** *Lastly, the Committee notes that the complainant organization alleges the lack of compliance with several court orders for the reinstatement of founding members of SITRAPDH and leaders of SINTETDM.GAS following their dismissal. Concerning the members of SITRAPDH, the Committee notes that, according to the complainant organization, seven workers were dismissed for having participated in the formation of SITRAPDH, and that the Office of the Human Rights Ombudsman had reportedly refused to comply with the court rulings for the reinstatement of these workers, which were handed down by a first instance court and which were confirmed in 2015 by the Court of Appeals for Labour and Social Welfare. The Committee notes that the Office of the Human Rights Ombudsman states that, while the reinstatement of the dismissed workers was delayed due to provisional amparo that was granted in favour of the Office of the Human Rights Ombudsman within the labour reinstatement proceedings being conducted, compliance was ensured with the court reinstatement orders, which are elements confirmed by the Government. The Committee duly notes these elements.*
- 381.** *Regarding SINTETDM.GAS, the Committee notes that the complainant organization alleges that anti-union dismissals were carried out against five of its leaders and that, although the first instance court decisions confirmed by the Court of Appeals for Labour and Social Welfare in August and October 2015 ordered the reinstatement of the trade union leaders, the employers' organization refused to pay them the wages and other benefits lost. The Committee observed that it has received no reply from the Government in this regard.*
- 382.** *The Committee recalls that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association, and that in numerous cases, it requested the Government to ensure that the persons in question were reinstated in their jobs [see **Compilation**, paras 1104 and 1168]. The Committee therefore requests the Government to ensure that it has fully complied with the court decisions issued by the judicial body with regard to the dismissal of the leaders of SINTETDM.GAS.*

## The Committee's recommendations

- 383.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee urges the Government to ensure that all the necessary measures have been taken to ensure the safety of the leaders of the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG), the Trade Union of Gas Bottling, Transport, Distribution and Maintenance Workers (SINTETDM.GAS), and the Unite for Change National Union of Autonomous Sports Confederation Workers (SNUCTCDAG), who are at risk, and that the necessary measures are taken to rapidly complete the investigation that is still under way concerning the alleged threats and attempted break-in at the premises of the complainant organization, initiated by Ms Amézquita. The Committee requests the Government to keep it informed in this respect.**
  - (b) **The Committee requests the Government to ensure that it has given full effect to the decision by the Constitutional Court on the publication of the right to clarification of Mr Sandoval and Ms Amézquita, respectively. The Committee requests the Government to keep it informed in this respect.**
  - (c) **While it recalls that trade union leaders cannot claim immunity under ordinary laws, the Committee requests the Government to ensure, within its competence, that the decision on the request for Ms Amézquita to be**



disbarred does not constitute retaliation for her trade union activities. The Committee requests the Government to keep it informed in this respect.

- (d) The Committee requests the Government to ensure that full effect has been given to the court decisions handed down by the judicial body responsible for the dismissal of the leaders of SINTETDM.GAS.

Case No. 3399

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Hungary presented by

- Hungarian trade union confederations of Democratic League of Independent Trade Unions (LIGA)
- National Confederation of Workers' Councils (MOSZ)
- Confederation of Unions of Professionals (ÉSZT)
- Forum for the Cooperation of Trade Unions (SZEZ) and
- Hungarian Trade Union Confederation (MASZSZ)

**Allegations: The complainant organizations alleges that Act C on the Health Service Legal Relationship adopted in October 2020 and its implementing decrees issued in November 2020, in the absence of effective social dialogue, are in violation of healthcare workers' collective bargaining rights and their right to strike**

- 384.** The complaint is contained in a communication dated 13 January 2021, submitted by the Democratic League of Independent Unions (LIGA), National Confederation of Workers' Councils (MOSZ), Confederation of Unions of Professionals (ÉSZT), Forum for the Cooperation of Trade Unions (SZEZ) and the Hungarian Trade Union Confederation (MASZSZ).
- 385.** The Government of Hungary transmitted its observations on the allegations in communications dated 15 February, 23 March and 23 August 2021.
- 386.** Hungary has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

- 387.** In their communication dated 13 January 2021, the LIGA, the MOSZ, the ÉSZT, the SZEZ and the MASZSZ allege that Act C on the Health Service Legal Relationship (hereinafter referred to as Act C of 2020), adopted by the Hungarian Parliament on 6 October 2020 and in force from 18 November 2020, restricts the rights of trade unions by prohibiting

collective bargaining and the right to strike, thereby substantially undermining the right of healthcare workers and unions.

- 388.** The complainants note that the Act was adopted during the COVID-19 pandemic, when healthcare workers were fighting daily to the end of their strength.
- 389.** The complainants indicate that under Act C of 2020, the public servant status of healthcare workers was terminated and all healthcare workers were required to sign a new work contract by 1 March 2021 giving them a new legal employment relationship with a so-called 'health service status'. The complainants note that subsequently healthcare workers have been deprived of the rights and benefits of the legal status of public servants. The complainants further indicate that after 1 March 2021, healthcare workers will only be eligible to work in the public healthcare system if they signed a new work contract under the new legal status (some exceptions are foreseen).
- 390.** According to the complainants, Act C of 2020 significantly restricts the collective rights of state healthcare workers at the state-maintained healthcare providers:
- (a) Under Article 15(10) of Act C of 2020, state healthcare workers at the state-maintained healthcare providers cannot conclude collective agreements.
  - (b) Under Article 6 of the Decree issued for the implementation of Act C of 2020 (Government Decree 530/2020), all collective agreements concluded with state healthcare workers expire on 1 January 2021.
  - (c) Under Article 15(11) of Act C of 2020, public healthcare workers can only organize and go on strike in accordance with specific rules laid down in an agreement concluded between the Government and the 'unions concerned'. The complainants note that if no agreement is reached, the right to strike cannot be exercised.
- 391.** The complainants argue that the legal exclusion of the conclusion of collective agreements seriously violates Article 4 of ILO Convention No. 98, which was ratified by Hungary on 6 June 1957. They note that in the case of the employees under the new 'health service status', the relevant ILO Conventions do not allow for the exclusion of collective bargaining and of conclusion of collective agreements. This is because healthcare providers (employers), who employ the employees under the new 'health service status' do not qualify as public administration bodies or authorities for which this right could be restricted (ILO Convention No. 151 on Labour Relations (Public Service, also ratified by Hungary)). The complainants also note that the fact that the source of funding for public healthcare providers is mainly the state budget does not justify the complete withdrawal of the right to collective bargaining.
- 392.** In relation to the right to strike, the complainants note that restricting the right to strike is a serious violation of Part 1 and 2 of Article 3 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, which was ratified by Hungary on 6 June 1957. They argue that making the exercise of the right to strike subject to an agreement with the Government and the conditions contained therein unduly restrict the right of trade unions under the Convention to determine their activities freely. Moreover they note that the requirement that an agreement on the exercise of the right to strike has to be concluded with the Government, which already plays a legislative, authority and maintaining role, also raises the issue of official intervention. The complainants add that legal restrictions on the right to strike for healthcare workers are already set out in the Act VII of 1989 on Strikes. As such, the further restrictive provision of the new law is unjustified and disproportionate.

- 393.** In addition, the complainants indicate that Act C of 2020 and its implementing Government Decree (530/2020) were unilaterally initiated by the Hungarian Government, providing only a couple of hours for reaction from the involved parties, ignoring effective social dialogue.
- 394.** The complainants, in light of the complaint submitted by three Hungarian confederations in May 2020 under Case No. 3381, further express their serious concern about the general tendency toward dismantling of social dialogue at various levels in Hungary.

## B. The Government's reply

- 395.** In its communications, the Government states that having recognized the needs arising from the special situation of the specific group of employees engaged in the healthcare sector, the Hungarian Parliament decided to establish a special regulation on health service legal relationship and adopted Act C of 2020 on Health Service Legal Relationship on 6 October 2020. The Government points out that with the abolition of the status of civil servant, a new status, specifically defined for the health sector was established. This new status is the so-called health service legal relationship, the details of which are laid down in Act C of 2020 in sufficient detail.
- 396.** The Government indicates that the new legislation in force devotes a separate section to labour relations. The Government states that Act C of 2020 excludes collective agreements with healthcare providers, but establishes a health Service Conciliation Forum (ESZÉF) with a view to reconcile the interests of persons with a legal relationship in the health service, negotiate settlement of disputes and establish of appropriate agreements. The Conciliation Forum operates with the participation of the Government of Hungary, the national sectoral representative organizations and the negotiating group of national employee representative organizations of persons having a health service legal relationship. It is responsible for matters relating to the living and working conditions and conditions of employment of persons employed in the health service sector.
- 397.** The Government notes that in Hungary there had been extremely heterogeneous collective agreements in the health sector. It argues that the aim of Act C of 2020 was to create a transparent and homogeneous system for health workers employed in state and municipal health institutions through the establishment of a health service legal relationship.
- 398.** The Government notes that the implementing regulation of Act C of 2020 incorporates the elements of the sectoral collective agreement affecting most hospitals. Part 6 of the Government Decree 528/2020. (XI. 28.) on the implementation of Act C of 2020 adequately reflects the provisions of the multi-employer collective agreement concluded by the National Healthcare Service Centre with the Democratic Trade union of Workers in the Social and Health Sector of Hungary in relation to the specific working time rules of a person with a health service legal relationship. The Government maintains that this ensures that healthcare workers benefit from guaranteed provisions in a uniform manner rather than from the rules varying between institutions.
- 399.** The Government explains that Act C of 2020 forms an integral part of the measures taken to alleviate the serious situation caused by the COVID-19 epidemic. It also points out that the results achieved so far regarding the general employment status of health professionals in Hungary indicate a significant improvement over the last decade in the employment status of health professionals.

- 400.** The Government also indicates that given the difficulties posed by the appropriate management of the status of the persons concerned, it has already considered some recommendations from the sector that proved to be valid and beneficial for the case. The Government argues that this clearly reflects that the voice of the professionals can be heard and will always be welcome during the governmental consultation processes.
- 401.** The Government clarifies that Act C of 2020 does not set out provisions with general effect, only provisions relating to persons falling within the personal scope of the Act, i.e. healthcare workers with so-called health service status, healthcare workers and interns. As such, Act C of 2020 is not applicable to the entire health sector, only to institutions run by the state and local authorities, hence to public sector employees.
- 402.** The Government notes that Article VIII(2) and (5) of the Fundamental Law of Hungary grants the freedom of organization, while Article XVII declares the right to collective bargaining and to strike. It also adds that the implementation of Convention No. 87 and Convention No. 98 was a priority in the drafting of Hungarian regulation.
- 403.** Regarding the right to strike in the healthcare sector, the Government adds that it may be exercised at public sector healthcare providers in accordance with the special rules laid down in the agreement between the Government and the relevant trade unions. In 1994 such an agreement was reached between the Government and the relevant trade unions on the exercise of the right to strike of public servants. The Government also points out that the Constitutional Court of Hungary has examined the domestic regulations several times over the past 30 years, and the Court has not found that the form of agreement would unnecessarily restrict any fundamental right. The Government explains that this provision does not exclude the right to strike at healthcare providers, but makes it conditional. The Government argues that the condition in itself cannot be considered as a disproportionate restriction. This is because for those employed at public healthcare providers there is a greater public interest in the operation of healthcare, the maintenance of continuous patient care and the fulfilment of the state's life and health obligations than for the unconditional exercise of the right to strike.
- 404.** The Government also notes that under Act VII of 1989 on Strikes, strikes are prohibited at public authorities carrying out certain public services. In accordance with the above, Act C of 2020 similarly regulates the matter, which in the Government's view is allowed by the ILO Conventions.
- 405.** The Government explains that Section 3(3) of Act VII of 1989 on Strikes excludes the possibility of exercising the right to strike if it would directly and seriously endanger life, health, bodily integrity or the environment, or prevent the mitigation of elemental damage. Moreover, pursuant to Section 4(2) of Act VII of 1989, at employers carrying out activities that fundamentally affect the population, in particular in the field of public transport and telecommunications, as well as at the utilities providing electricity, water, gas and other energy services, and including the health sector, the right to strike can only be exercised in a manner not impeding the provision of sufficient service. The Government notes that in this regard the new regulation under Act C of 2020 intends to determine the conditions for the exercise of the right to strike with the involvement of stakeholders, necessitated by the above-mentioned public interest provisions.
- 406.** In its communication of 24 March 2021, the Government also stresses that, in accordance with Section 1 of Act C of 2020 (Scope), collective agreements already concluded are not terminated in respect of health sector employees that do not fall under the personal scope of Act C of 2020. Rules set out under Section 15 of Act C of 2020 relating to labour relations are not applicable to persons without a health service status.

**407.** The Government further elaborates that pursuant to Article 6 of Convention No. 98, the Convention is not applicable to the status of public service employees and in no way is it construed to affect their rights and legal status. It also refers to paragraph 576 of the **Digest of decisions and principles of the Freedom of Association Committee** (2006): “The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).” The Government adds that with the introduction of the new regulation the Government aimed to grant the relevant rights to the employees concerned – as Act C of 2020 sets out a number of provisions guaranteeing representation of the interests of healthcare workers and persons working in the health sector – while providing for adequate measures serving the protection of public health, personal lives and safety. The Government stresses its belief that this is in conformity with the relevant standards of the ILO.

### C. The Committee’s conclusions

- 408.** *The Committee notes that, in the present case, the complainants allege that Act C of 2020 on the Health Service Legal Relationship adopted in October 2020 and its implementing decrees issued in November 2020 are in violation of public healthcare workers’ right to collective bargaining and their right to strike. The complainants also allege that the Act and its implementing decrees were adopted without effective social dialogue and consultation with the relevant workers’ organizations.*
- 409.** *The Committee notes from the allegations that effective from 1 March 2021, Act C of 2020 terminated the previous public servant status of healthcare workers and subsequently required healthcare workers to sign a new contract establishing a new legal status called ‘health service status’. After 1 March 2021, signing a new work contract under the new legal status is a condition to work in the public healthcare system.*
- 410.** *The Committee also notes the complainants’ allegations that: (a) according to Article 15(10) of Act C of 2020, public healthcare workers at state-maintained healthcare providers cannot conclude collective agreements; (b) according to Article 6 of Government Decree 530/2020 implementing Act C 2020, collective agreements concluded with state healthcare workers shall expire on 1 January 2021; and (c) according to Article 15(11) of Act C of 2020, public healthcare workers at the state-maintained healthcare providers can only organize and go on strike in accordance with specific rules laid down in an agreement concluded between the Government and workers’ organizations concerned.*
- 411.** *The Committee notes the Government’s indication that the Fundamental Law of Hungary grants freedom of organization under Article VIII(2) and (5) and, under Article XVII, the right to collective bargaining and strike. The Committee further notes the Government’s statement that Conventions Nos 87 and 98 were regarded as a priority during the process of drafting Act C of 2020. The Committee also notes from the Government that the aim of the Act was to create a transparent and homogeneous system for healthcare workers employed in state and municipal health institutions through the establishment of a health service legal relationship. Moreover, it notes that according to the Government, Act C of 2020 forms an integral part of the measures taken to alleviate the serious situation caused by the COVID-19 pandemic.*
- 412.** *As regards the allegation concerning the right to collective bargaining of workers in a health service legal relationship, the Committee notes the Government’s reply that: (i) according to Article 1(1) of Act C of 2020, the personal scope of the Act covers public and municipal health providers, their maintainers, as well as the legal status of persons in a health service legal relationship with said public and municipal healthcare providers; and (ii) according to*



Article 15(1) of Act C of 2020, in order to reconcile the interests of persons in a health service legal relationship, settle disputes with negotiation and establish appropriate agreements, a Health Service Conciliation Forum was established. The Committee also notes that the Conciliation Forum operates with the participation of the Government, the national sectoral representative organizations and the negotiating groups of national employee representative organizations of individuals in a health service legal relationship. As for persons who are not in a health service legal relationship, the Government indicates that different regulations apply, that are not prohibitive or restrictive.

- 413.** *The Committee acknowledges the exceptional circumstances posed by the COVID-19 pandemic, particularly in relation to healthcare workers, and the necessity to adopt measures to mitigate the effects of the resulting crisis. The Committee, however, understands both from the Government and the complainants' indication that Act C of 2020 was adopted as part of an overall reform to create transparent and homogeneous system for healthcare workers employed in state and municipal health institutions and that measures under Act C of 2020 were not adopted with a temporary nature, but as the standing regulation of the rights and obligations of persons in health service legal relationship working at public and municipal healthcare providers.*
- 414.** *The Committee recalls that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1241]. In this regard, it recalls that the encouragement and promotion of collective bargaining applies both to the private sector and to nationalized undertakings and public bodies. It further recalls that a distinction must be drawn between, on the one hand public servants who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies), as well as officials acting as supporting elements in these activities who may be excluded from collective bargaining and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions who may not. In that regard, the Committee has considered that health service employees cannot be considered to be public servants engaged in the administration of the State whose right to negotiate may be subject to restrictions and that persons employed in public hospitals should enjoy the right to collective bargaining [see **Compilation**, paras 1270 and 1269].*
- 415.** *As regards the establishment of the Health Service Conciliation Forum, the Committee notes that according to Articles 15(2) and 15(6) of Act C of 2020, the Government shall consult through the Conciliation Forum with the representatives of national trade union federations and national representative bodies of municipalities regarding matters falling within its competence, that is matters relating to the living and working conditions, as well as the employment conditions of persons in a health service legal relationship. Article 15(7) of Act C of 2020 further notes that the Conciliation Forum shall be consulted on matters falling within its competence as detailed under paragraph 2, namely those relating to human resources management and the management of personal remunerations and benefits. At the same time, Article 15(10) of Act C of 2020 explicitly states that "collective agreement may not be concluded with a healthcare provider falling within the scope of this Act". The Committee recalls in this regard that only armed forces, the police and public servants in the administration of the State may be excluded from collective bargaining [see **Compilation**, para. 1239].*
- 416.** *Regarding the Government's note that Act C of 2020 was adopted with the aim to create a transparent and homogeneous system for health workers employed in state and municipal*



health institutions and that the Act incorporates the elements of the sectoral collective agreement affecting most hospitals ensuring that healthcare workers benefit from guarantees in a uniform manner rather than from the rules varying between institutions, the Committee recalls that according to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case law of the administrative labour authority [see **Compilation**, para. 1404].

- 417.** *In view of the above, and noting that the Government indicates that it has already considered some recommendations from the representative organizations in the sector, the Committee requests the Government to revise Act C of 2020, in consultation with the representative workers' and employers' organizations concerned, so that persons in a health service legal relationship have the right to engage in collective bargaining on their terms and conditions of employment.*
- 418.** *Regarding the allegation that under Article 6 of Government Decree 530/2020 implementing Act C 2020, collective agreements concluded with state healthcare workers shall expire on 1 January 2021, the Committee notes the Government's indication that already existing collective agreements will remain in force for individuals who do not fall within the scope of the Act but does not otherwise contest the allegation that these agreements have been annulled with respect to those covered by the Act. The Committee, therefore, is obliged to recall that the interruption by law of provisions in already concluded collective agreements is not in conformity with the principle of freedom of association and the effective recognition of collective bargaining and that a legal provision which modifies unilaterally the content of signed collective agreements, or requires that they be renegotiated, is contrary to the principle of freedom of association and the effective recognition of collective bargaining, as well as to the principle of acquired rights of the parties. In view of the new legal status of persons in a health service legal relationship, the Committee requests the Government to engage with the representative workers' and employers' organizations concerned so that the terms and conditions of employment can be jointly agreed and, if not possible, to ensure that any pending matters may be reviewed by an arbitration body that has the confidence of the parties concerned.*
- 419.** *Regarding the allegation that under Article 15(11) of Act C of 2020, public healthcare workers at the state-maintained healthcare providers can only organize and go on strike in accordance with specific rules laid down in an agreement concluded between the Government and workers' organizations concerned, the Committee notes the Government's response that the regulation does not prohibit the right to strike, but merely restricts it and is not a disproportionate restriction of fundamental rights. In that regard the Committee notes the information provided by the Government according to which: (i) under Section 3(3) of Act VII of 1989 on Strikes, there is no legal possibility for strike if it would directly and seriously endanger human life, health, corporal integrity or the environment, or would impede prevention of the effect of natural disasters; and (ii) under Section 4(2) of Act VII of 1989 on Strikes, in the case of employers who perform activities of fundamental public concern – such as, in particular, in the field of mass transportation on public roads and telecommunications, as well as at suppliers of electivity, water, gas and other energy – the right to strike may be exercised in a way so as not to impede the performance of services maintained at a level deemed sufficient. The Government adds that healthcare may be included in the list given and that the list provided in the law is not exclusive. The Committee also notes the Government's indication, that the regulation under Act C 2020 requesting the conclusion of an agreement between the parties is not unprecedented in Hungarian law and that an agreement between the Government and trade unions has been in force since 1994.*

420. *The Committee notes that according to the complainants, legal restrictions on the right to strike for healthcare workers are already set out in Act VII of 1989 on Strikes and further restrictive provision of the new law is unjustified and disproportionate. The Committee also notes the complainants' indication that: (i) the requirement that an agreement on the exercise of the right to strike has to be concluded with the Government, which already plays a legislative authority and maintaining role, raises the issue of official intervention; and (ii) if no agreement is reached the right to strike cannot be exercised.*
421. *The Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see **Compilation**, para. 830].*
422. *The Committee welcomes the Government's indication that Section 15(11) of Act C of 2020 does not prohibit the right to strike of healthcare providers and notes the Government's indication that healthcare may be included among cases where minimum services could be applied and refers in that regard to Section 4(2) of Act VII of 1989 on Strikes. The Committee observes that the Strike Act, as amended, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, they shall be agreed upon by the parties during the pre-strike negotiations or, failing such agreement, they shall be determined by final decision of the court.*
423. *However, the Committee observes that the obligation to have an agreement on the conditions under which the right to strike can be exercised means that some healthcare workers with health service status that are not considered essential will not be able to exercise this right as long as such an agreement is not concluded. In these circumstances, the Committee recalls that the workers' and employers' organizations concerned must be able to participate in determining the minimum services which should be ensured, and in the event of disagreement, legislation should provide that the matter be resolved by an independent body and not be the administrative authority [see **Compilation**, para. 882]. Moreover, as regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see **Compilation**, para. 856].*
424. *In view of the above considerations, the Committee requests the Government to keep it informed of any agreements made on the right to strike of persons in a health service legal relationship and, upon consultation with the representative workers' and employers' organizations concerned, review Section 15(1) of Act C of 2020 so as to ensure that for those who may not be considered to be essential services in the strict sense of the term, an independent body may determine the minimum service for industrial action should no agreement be reached between the parties. For persons who may be considered to be in essential services in the strict sense of the term, the Committee requests the Government to ensure that adequate, impartial and speedy conciliation and arbitration proceedings are available in the event that they are not able to have recourse to industrial action.*
425. *With regard to the allegation that Act C of 2020 and Government Decree 530/2020 implementing Act C of 2020 were unilaterally initiated by the Hungarian Government and adopted without sufficient consultation with the relevant organizations, the Committee notes that the Government has not provided any response. The Committee has emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests [see **Compilation**, para. 1536]. The*

*Committee recalls that in any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement [see **Compilation**, para. 1421]. Moreover, in line with the *Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)*, the Committee underlines the importance of social dialogue in general and collective bargaining in particular in responding to crisis situations by encouraging the active participation of employers' and workers' organizations in planning, implementing and monitoring measures for recovery and resilience. The Committee trusts that the Government will review the measures taken affecting healthcare workers, in consultation with the representative workers' organizations concerned, and fully ensure respect for this principle on any further measures considered.*

## The Committee's recommendations

**426.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee requests the Government to revise Act C of 2020, in consultation with the representative workers' and employers' organizations concerned, so that persons in a health service legal relationship have the right to engage in collective bargaining on their terms and conditions of employment.
- (b) In view of the new legal status of persons in a health service legal relationship and the cancellation of the previously concluded collective agreement, the Committee requests the Government to engage with the representative workers' and employers' organizations concerned so that the terms and conditions of employment can be jointly agreed and, if not possible, to ensure that any pending matters may be reviewed by an arbitration body that has the confidence of the parties concerned.
- (c) The Committee requests the Government to keep it informed of any agreements made on the right to strike of persons in a health service legal relationship and, upon consultation with the representative workers' and employers' organizations concerned, review Section 15(1) of Act C of 2020 so as to ensure that an independent body may determine the minimum service for industrial action should no agreement be reached between the parties. For persons considered to be in essential services in the strict sense of the term, the Committee requests the Government to ensure that adequate, impartial and speedy conciliation and arbitration proceedings are available in the event that they are not able to have recourse to industrial action.
- (d) Finally, the Committee trusts that the Government will review the measures taken affecting healthcare workers, in consultation with the representative workers' organizations concerned, and take the necessary measures to fully ensure respect for the principle of consultation with the representative workers' and employers' organizations concerned on any further measures considered.

## Case No. 2508

### Interim report

#### **Complaint against the Government of the Islamic Republic of Iran presented by**

- the International Confederation of Free Trade Unions (ICFTU, the initial complainant in 2006 before merging into the International Trade Union Confederation, (ITUC) and**
- the International Transport Workers' Federation (ITF)**

**Allegations: The complainant denounces acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists**

- 427.** The Committee last examined this case (submitted in 2006) at its October 2020 meeting, when it presented an interim report to the Governing Body [see 392nd Report, approved by the Governing Body at its 340th Session, paras 655–677].<sup>6</sup>
- 428.** The Government forwarded its partial observations in communications dated 31 January 2021 and 29 September 2021.
- 429.** The Islamic Republic of Iran has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. Previous examination of the case**

- 430.** At its October 2020 meeting, the Committee made the following recommendations [see 392nd Report, para. 677]:
- (a) The Committee expresses the firm expectation that, with ILO technical assistance and in full consultation with representatives of workers and employers, the Iranian legislation will be rapidly brought into line with the freedom of association principles, in particular by allowing trade union pluralism and requests the Government to provide information on the progress made in this regard. Further, noting the Government's indication that it is considering the ratification of Conventions Nos 87, 98 and 144, the Committee requests the Government to keep it informed of the progress made in this regard, if any.
  - (b) The Committee once again urges the Government to ensure that the workers at the company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer and requests the Government to keep it informed of the measures taken and the developments in this regard.
  - (c) The Committee requests the Government to keep it informed of the outcome of the pending proceedings in the case of the 17 persons charged in relation to the

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<sup>6</sup> [Link to previous examination.](#)

truck drivers' strike and to send a copy of the judgments in their cases once they are issued. It further once again urges the Government to take all necessary measures to ensure that no one is imprisoned merely for having organized or having peacefully participated in the truck drivers' strike in September 2018 and to confirm that the only persons charged or pursued in relation with this action are the 17 persons to which it has referred.

- (d) Recalling that no one should be imprisoned for exercising their right to freedom of association, the Committee requests the Government to indicate whether there are any charges still pending against the members of the Free Union of Workers of Iran, Jamil Mohammadi or Shapour Ehsani Raad and if so, to specify the nature thereof.
- (e) Welcoming the Government's indication that it will make serious effort to pursue the recommendations of the Committee through the Human Rights Office of the Judiciary, the Committee must once again urge it to continue intensifying these efforts in order to ensure that peaceful and legitimate union activities such as those mentioned above do not entail criminal charges and sanctions for trade unionists and that the convictions on such charges are immediately reviewed. The Committee requests the Government to keep it informed of the steps taken in this regard and of any progress made to review the conviction of Mr Azimzadeh with a view to his release.
- (f) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

## B. The Government's reply

- 431.** The Government indicates in its communications that workers can freely choose the organization they wish to join and lawfully formed organizations can recruit members, represent them and organize their activities without interference from authorities or the employer. It further indicates that the growing number of workers' organizations in recent years shows that the establishment of workers' organizations and workers' membership in them are not restricted. Nevertheless, the Government intends to pursue the revision of legislation, so as to enable the expansion of workers' organizations in conformity with international labour standards.
- 432.** The Government further indicates that together with social partners, it will spare no effort to improve the workers' situation. However, it expects the Committee to take into consideration the impact of the unilateral measures of the Government of the United States on the business environment in the Islamic Republic of Iran and their consequences for the livelihoods of workers and employers.
- 433.** With regard to the revision of the Labour Law, the Government indicates that after several meetings and consultations with representatives of workers' and employers' organizations, the draft revised Chapter VI of the Law, which was approved in the 5 August 2002 meeting of social partners, government representatives and ILO experts, was re-examined on 16 June 2021. The Government adds that the following proposal of a revised text of article 131 of the Labour Law was put to discussion: "Pursuant to article 26 of the Constitution of the Islamic Republic of Iran, with a view to strengthening occupational rights and interests, which would also guarantee the interests of society, workers, employers and self-employed professionals who belong to an occupational category, a workshop and a geographical region, are entitled to establish or join syndicates (occupational associations) of workers, employers, or the self-employed in accordance with the relevant legal rules and conditions". Finally, the Government

indicates that the draft law on the revision of the labour code that was previously submitted to parliament has been returned to the Government for further revision.

**434.** The Government further refers to the measures taken in relation to the ratification of the following international labour Conventions:

- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98): after tripartite consultations with representatives of high-level workers' and employers' organizations, the draft laws on the ratification of the Conventions were adopted in the Council of Ministers on 13 December 2020. They were then submitted to parliament and are currently awaiting examination by the competent parliamentary commissions.
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87): the Government is currently studying the feasibility of ratification of the Convention in consultation with workers' and employers' organizations. Pending the decision on the feasibility of ratification, the Government is taking appropriate measures to ensure that due attention is paid to the implementation of the substance of the Convention and the recommendations of the Committee on Freedom of Association. In this regard, the Government has included, inter alia, the following items in its agenda: revision of the relevant executive bylaws; coordination with competent organs with a view to consideration and implementation of applicable standards, and, continuous efforts to reinforce the right of occupational organizations to develop their activities.

**435.** Concerning the regulatory measures it has taken to date, the Government indicates :

- On 3 March 2021, the Council of Ministers adopted an amendment to the "Bylaw on establishment, the scope of duties and powers, and the the forms of operation of trade associations and their confederations (adopted in 2010)". This amendment was previously submitted for consultation and approval of representatives of high-level workers' and employers' organizations in the framework of the High Labour Council. The amended Bylaw was notified to the relevant Ministries and Provincial Directorates. Some of the main objectives of this amendment were further development and capacity-building for workers' and employers' organizations; participation of the high confederation of employers in the oversight of the elections held in affiliated employers' associations; extension of participation of trade associations affiliated to the High Confederation of Workers' Associations in the general assemblies of the Confederation, and, allowing the establishment of culture and media sector professionals' organizations.
- On 13 November 2019, the Council of Ministers adopted Decision No. 105569T 56914H with a view to facilitating the establishment of the organization of culture, arts and media professionals. Subsequently, pursuant to paragraph 7 of the Decision, "Guidelines concerning the establishment and activity of associations of culture, arts and media professionals and the related confederations", and, "Procedure for the establishment of associations of culture, arts and media professionals and the related confederations" were approved by the Ministers of labour and culture on 5 February and 11 May 2020.
- The draft law on the revision of the "Law on Islamic Labour Council" is still under examination in parliament.



- 436.** With regard to Tehran and Suburbs Bus Company, the Government indicates that the workers at the company have the freedom to join the organization of their choosing and the organization can select its members and organize its activities without interference by the Government and the employer. The Government further adds that it is aware of the difficulties workers face and endeavours to resolve the existing issues through serious support for rights and freedoms of workers' organizations which pursue their demands peacefully within the framework of national laws and regulations.
- 437.** With regard to the 17 persons arrested in relation to the truck drivers' strike in September 2018, the Government indicates that these persons were not arrested for organizing or participating in a peaceful strike, but were charged with breach of public order. Nevertheless, the Government indicates that all the persons concerned were ultimately released, either after the prosecutor dismissed the charges against them, or upon acquittal in court.
- 438.** With regard to the situation of Mr Jamil Mohammadi and Mr Shapour Ehsani Raad, the Government emphasizes that no member of workers' organizations is prosecuted for peaceful occupational activities and no restriction is imposed on their freedom. The Government further indicates that Mr Jamil Mohammadi was charged with membership and effective activity in an illegal, terrorist group and was sentenced to two years imprisonment for collusion against national security, a sentence that has not been executed to date. With regard to the charges against Mr Ehsani Raad, the Government refers to links with subversive elements in the communist party, action against national security and propaganda against the state.
- 439.** With regard to the situation of Mr Jafar Azimzadeh, the Government indicates that he was sentenced to five years imprisonment for collusion against national security and propaganda against the Islamic Republic of Iran and was released in March 2021.

### C. The Committee's conclusions

- 440.** *The Committee recalls that this case, lodged in 2006, concerns acts of repression against the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), as well as the arrest, detention and condemnation of large numbers of trade union members and officials, and the inadequate legislative framework for the protection of freedom of association.*
- 441.** *The Committee welcomes the information provided by the Government concerning the measures taken in relation to the ratification of Conventions Nos. 98 and 144 and expects that the ratification process will soon come to its conclusion. It also notes the Government's indication with regard to the examination of feasibility of ratification of Convention No. 87 and requests the Government to keep it informed of the developments in this regard.*
- 442.** *Regarding the legislative reform process, the Committee notes the Government's statement of intention to pursue the revision of the legislation, so as to enable the expansion of workers' organizations in conformity with international labour standards. It further notes the Government's indications with regard to the proposal of revision of article 131 of the Labour Law and the actual revision of the "Bylaw on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations". The Committee recalls that throughout the examination of this case and other cases concerning freedom of association in the Islamic Republic of Iran, it has constantly requested the Government to amend the labour legislation so as to bring it into full conformity with freedom of association principles. In particular the Committee has constantly urged the Government to review those legal provisions that establish trade union monopoly at the work unit, sectoral, provincial and national levels so as to allow for union pluralism. The Committee had already noted that*

note 4 of the current article 131 of the Labour Law establishes union monopoly at the enterprise level [see Case No. 2807, 359th Report, para. 700]. Furthermore, note 1 of current article 131 provides for one confederation of associations of workers or employers at the provincial level and a single general confederation of associations of workers or employers at the national level. The Committee notes with interest that in the proposal of review of article 131 cited in the Government report, the above-mentioned notes are removed. However, the Committee notes that the draft subjects the right to join or establish organizations to conformity with “relevant rules and conditions”.

- 443.** *The Committee recalls that trade union monopoly is enshrined not only in the provisions of labour law on the right to organize (article 131), but also, in the “Bylaw on establishment, the scope of duties and powers, and the the forms of operation of trade associations and their confederations” (hereafter: the Bylaw), which governs the procedure of establishment and registration of workers’ and employers’ organizations. In particular, article 15 of the Bylaw provides that “registration of two homogeneous organizations (trade association or confederation) in a single occupation or industry in a common geographical zone is not permitted”. The Committee notes that the latest review of the Bylaw referred to in the Government report does not address the issue of trade union monopoly and leaves article 15 unchanged.*
- 444.** *The Committee further notes the Government’s indication concerning the adoption by the Council of Ministers on 13 November 2019 of Decision No. 105569T 56914H (hereafter: the Decision) with a view to facilitating the establishment of the organization of culture, arts and media professionals; as well as the subsequent adoption of Guidelines concerning the establishment and activity of associations of culture, arts and media professionals and the related confederations (hereafter: Guidelines), and, Procedure for the establishment of associations of culture, arts and media professionals and the related confederations (hereafter: Procedure).*
- 445.** *The Committee notes with deep regret that the recently adopted Guidelines and Procedure, reproduce the restrictions to trade union pluralism that this Committee has for many years requested the Government of Islamic Republic of Iran to remove from the legislation. It notes, in particular, that paragraph 5.3 of the Procedure provides that the approval of an application for the establishment of a professional association will be subject to the condition that no other professional association with a similar object in the field of activity concerned should be already registered with the Ministry of Labour. Furthermore, paragraph 9 of the Guidelines provides that the professional associations in the fields of literature, film, music, theatre, visual arts, the press and other cultural, artistic and media-related fields, may form only one confederation in each field. These confederations may form one national general confederation, as defined in paragraph 3 of the Decision and paragraph 1.10 of the Guidelines. Finally, the Committee notes that according to paragraph 4 of the Procedure, pre-existing recognized associations should submit a request of conversion of their status in accordance with the new rules within three months. At the expiration of this deadline, if they fail to submit a conversion request, any other qualified interested person can request the establishment of a professional association in the field in question at the Ministry of Labour.*
- 446.** *The Committee notes that these rules establish organization monopolies at the primary and higher levels in each specified cultural, artistic and media-related professional field and pave the way for the suppression of pre-existing organizations that would not comply with the newly established rules and procedures.*
- 447.** *The Committee recalls that the existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization; and that a provision authorizing the refusal of an application for registration if another union, already registered,*

is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organization of their own choosing, contrary to the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 477 and 494].

- 448.** *In view of the above conclusions, the Committee once again expresses the firm expectation that in full consultation with representatives of workers and employers, the Iranian legislation will be rapidly brought into line with freedom of association, by allowing trade union pluralism. In particular, it requests the Government to review the above-cited Guidelines and Procedure so as to allow all workers and employers in cultural, artistic and media-related fields to establish and join organizations of their own choosing at all levels and to keep it informed of developments in this regard.*
- 449.** *The Committee notes that the Government indicates that the workers at Tehran and Suburbs Bus Company are free to join the organization of their choosing, however, it does not indicate any concrete measures taken to recognize the SVATH or whether the SVATH has effectively been able to represent its members in relation to the employer and the authorities. The Committee therefore reiterates its previous recommendation urging the Government to ensure that workers at the company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer and requests the Government to keep it informed of the measures taken and developments in this regard.*
- 450.** *Regarding the persons arrested in the aftermath of truck drivers' strike in September 2018, the Committee takes note of the Government's indication that they have all been released and the charges against them were dropped.*
- 451.** *The Committee notes the Government's indications with regard to the situation of Messrs Jamil Mohammadi, Shapour Ehsani Raad and Jafar Azimzadeh, leading members of the Free Union of Workers of Iran, who were allegedly charged and sentenced to imprisonment for trade union activities. It notes that the sentence against Mr Mohammadi has not been executed for reasons that the Government does not explain, that Mr Azimzadeh was released after serving his last sentence and that Mr Ehsani Raad is currently in prison serving his sentence. The Committee further notes that the Government indicates that Messrs Mohammadi and Mr Azimzadeh were condemned under the charge of "collusion against national security", while Mr Ehsani Raad was condemned for action against national security and propaganda against the State. The Committee notes that once again these cases brought against trade unionists concern the application of articles 500 and 610 of the Islamic Penal Code – concerning propaganda against the State and collusion against national security – without any information being provided by the Government as to the facts or concrete actions that were attributed to those sentenced [see Case No. 2566, Report No. 351, para. 984 and Report No. 392, para. 73]. The Committee understands that "collusion against national security" refers to a secret agreement between two or more persons to commit one of the crimes defined in the penal code against internal or external security of the State and therefore requests the Government to provide information about the concrete actions attributed to Messrs Mohammadi, Mr Azimzadeh and Mr Ehsani Raad, including details of the "collusion" they were allegedly involved in and the nature of the acts that were being prepared in that context and their relation to the external or internal security of the State. Recalling that no one should be prosecuted, sentenced or sanctioned for the exercise of trade union activities, the Committee firmly urges the Government to ensure that peaceful and legitimate union activities do not entail criminal charges such as collusion against national security or propaganda against the state and that the convictions on such charges are immediately*

*reviewed. The Committee requests the Government to keep it informed of the steps taken in this regard and to provide copies of the relevant court judgments indicating the specific activities for which the trade unionists have been sanctioned. The Committee urges the Government further to ensure the immediate release of Mr Ehsani Raad should his conviction be due to his trade union activities.*

## **The Committee's recommendations**

**452. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**

- (a) The Committee welcomes the measures taken by the Government in relation to the ratification of Conventions Nos. 98 and 144 and expects that the ratification process will soon come to its conclusion. It requests the Government to keep it informed of the developments with regard to the outcome of the examination of feasibility of ratification of Convention No. 87.**
- (b) The Committee expresses the firm expectation that in full consultation with representatives of workers and employers, the Iranian legislation will be rapidly brought into line with the freedom of association principles, by allowing trade union pluralism. In particular, it requests the Government to review the "Guidelines on the establishment of associations of culture, arts and media professionals and the related confederations" and the "Procedure of establishment and activity of associations of culture, arts and media professionals and the related confederations", so as to allow all workers and employers in cultural, artistic and media-related professions to establish and join organizations of their own choosing at all levels. It requests the Government to provide information on the progress made in this regard.**
- (c) The Committee once again urges the Government to ensure that workers at the Tehran and Suburbs Bus Company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer and requests the Government to keep it informed of the measures taken and developments in this regard.**
- (d) Recalling that no one should be imprisoned for exercising their right to freedom of association, the Committee requests the Government to provide information about the concrete actions attributed to Messrs. Mohammadi, Azimzadeh and Ehsani Raad, including details of the "collusion" they were allegedly involved in and the nature of the acts that were being prepared in that context and their relation to the external or internal security of the State and to provide copies of the relevant court judgments. The Committee urges the Government further to ensure the immediate release of Mr Ehsani Raad should his conviction be due to his trade union activities.**
- (e) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.**

Case No. 3386

Report in which the Committee requests to be kept informed of developments

**Complaint against the Government of Kyrgyzstan presented by the Mining and Metallurgy Workers' Union of Kyrgyzstan (GMPK) supported by**

- IndustriALL Global Union
- the Federation of Trade Unions of Kyrgyzstan (FPK) and
- the Trade Union of Food and Processing Industry Workers of the Kyrgyz Republic

**Allegations: The complainants allege that if adopted, the draft Law on Trade Unions would violate freedom of association and collective bargaining rights. They further allege acts of interference and pressure on the FPK and its leadership**

- 453.** The complaint is contained in a communication from the Mining and Metallurgy Workers' Union of Kyrgyzstan (GMPK) dated 29 June 2020. In communications dated, respectively, 18 August and 9 December 2020, IndustriALL Global Union and the Trade Union of Food and Processing Industry Workers of the Kyrgyz Republic associated themselves with the complaint and provided additional information. In a communication dated 15 February 2021, the Federation of Trade Unions of Kyrgyzstan (FPK) associated itself with the complaint and further provided additional information in a communication dated 10 June 2021.
- 454.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its May–June 2021 meeting [see 395th Report, para. 7], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of this case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any observations.
- 455.** Kyrgyzstan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

### **The complainants' allegations**

- 456.** In their communications dated 29 June, 18 August and 9 December 2020, and 15 February and 10 June 2021, the GMPK, IndustriALL Global Union, the Trade Union of Food and Processing Industry Workers of the Kyrgyz Republic and the FPK put forward the following two sets of allegations: (1) if adopted, the draft Law on Trade Unions



pending in Parliament would violate freedom of association and collective bargaining rights; and (2) interference by the State authorities in the internal governance and matters of the FPK and its affiliates, as well as pressure on their leaders.

### Draft Law on Trade Unions

- 457.** The complainants allege that the draft Law on Trade Unions in question was prepared by members of Parliament without any consultation and discussion with trade unions and employers' organizations. The draft was submitted to Parliament on 27 May 2019, returned for a second reading on 30 April 2020, passed the second reading on 6 November 2020, adopted in the third reading on 31 March 2021 and sent to the President for signing. On 6 April 2021, a rally of workers was held in front of the building of the Government House, where the Office of the President is located. The delegation of protesters was received by representatives of the Office of the President who promised to bring all objective information to the attention of the President. The President did not sign the draft, returned it to Parliament with objections and instructed it to form a conciliation commission with representatives of the cabinet of Ministers, associations of employers and trade unions to prepare agreed upon draft legislation.
- 458.** The complainants consider that the draft contravenes the national Constitution and international labour standards, in particular Conventions Nos 87 and 98, and if adopted, would seriously undermine freedom of association in Kyrgyzstan and put an end to union democracy and independence. The complainants raise, in particular, the following issues.
- 459.** The complainants indicate that the draft Law grants the right to establish and join trade unions only to individuals who have reached 14 years of age and are engaged in labour (professional) activities, thus depriving students and pensioners of this right.
- 460.** The complainants further allege that section 7 of the draft Law regulates in detail internal rules, activities and functioning of workers' organizations, the contents of trade union statutes and their structure. The complainants allege, in this respect, that draft provisions transcend the framework of formal requirements and significantly hinder the establishment and development of trade unions by providing for a rigid hierarchy wherein any trade union organization, starting with workplace unions and going all the way to sector-wide unions, should be affiliated to a higher union structure or association, and that all unions should be affiliated to the national trade union association. Moreover, when defining the national trade union association, the draft Law makes a direct reference to the FPK. The functioning of trade unions outside of the prescribed structure is not allowed. Thus, the draft Law establishes a single system of trade unions as the only one allowed. Affiliates are accountable to and controlled by the Federation in terms of their activities. The Federation has the right to approve statutes of its affiliates, which should be aligned with provisions of the FPK statutes. The statutes of primary trade unions affiliated to sectoral and territorial trade union associations shall not contradict the statutes of the corresponding associations. Trade union organizations of all levels are obliged, within six months of the draft Law coming into force, to reorganize themselves and to amend their statutes. The failure to comply with the legal requirements entails the dissolution of the union and transfer of their assets to the FPK (section 35).
- 461.** The complainants further point out that the draft Law prescribes the procedure for electing a chairperson of the Federation and establishes the duration of his or her mandate and contains a definitive list of grounds for early relief from office. For instance, the chairperson of the Federation can be relieved from the post if he or she acquires



foreign citizenship. In addition, the draft Law legally establishes age restrictions for members of the Council of the Federation and its chairperson who shall be between 35 and 60 years of age. The draft Law also contains detailed definitive lists of tasks and functions of sectoral and territorial trade union associations and their regional branches.

- 462.** The complainants also point out that section 29 of the draft Law introduces a new obligation to publish in the media an annual report on trade unions' financial and economic activities. They explain that currently, trade unions, like commercial and other non-commercial organizations must submit reports to the State tax authorities, Social Fund and statistical bodies.
- 463.** The complainants believe that the adoption of the draft Law may affect the participation of Kyrgyzstan in the EU GSP+ programme, which Kyrgyzstan has enjoyed since early 2016 and which gives the right to the producers to export about 6,000 commodity items to Europe at zero-tariff rates. The annual trade turnover between Kyrgyzstan and the European Union is about US\$1 billion, of which about US\$100 million is exports under the GSP+ programme. One of the conditions of the GSP+ programme is the fulfilment of obligations under 27 international conventions on human rights, good governance, labour and environmental standards.
- 464.** The complainants indicate that the Government of Kyrgyzstan provided its assessment of the draft Law on 4 July 2019. In the Government's opinion, a number of draft provisions contradicts several pieces of legislation, which take precedence over the Law on Trade Unions. According to the complainants, some of the Government's arguments referred to potential violations of freedom of association guaranteed by Convention No. 87. In this respect, the complainants indicate that, among others, the Government expressed its concern regarding the apparent legislated monopoly of the FPK; detailed regulation of issues relating to the internal governance of trade unions (i.e. their organization, membership, structures, and operation); and the requirement that the statutes of local and primary trade union organizations that are part of sectoral and territorial trade union associations should not contradict the statutes of respective associations and that statutes of member organizations of the FPK should not contradict the FPK statutes. Regarding the latter, the complainants indicate that in the Government's opinion the registration procedure would become complicated for trade unions and the registering authority if the latter is required to verify not only the compliance with the legislation in force but also with the statutes of higher-level trade union organizations to which the organizations in question are affiliated. The complainants indicate that so far the Government's position was not taken into account by Parliament.
- 465.** The complainants explain that the draft Law is being lobbied by the Committee on Social Affairs, Education, Science, Culture and Healthcare of Parliament, whose speaker is Ms Gulkan Moldobekova, the spouse of the former Chairperson of the FPK, Mr Mirbek Asanakunov. The complainants link this fact to the alleged interference in the FPK internal matters as follows.

### Interference by the state authorities in trade union activities

- 466.** By way of background, the complainants explain that on 16 January 2017, by the decision of the FPK Council, Mr Asanakunov was confirmed to be an elected FPK Chairperson. In accordance with the FPK statutes, holding elected trade union positions for at least five years is a prerequisite for being elected. Later on, however, the FPK Council members became aware of the fact that, while running for the position of the Chairperson, Mr Asanakunov had provided forged documents to certify his five years of experience in

elected trade union positions. Mr Asanakunov did not have the required length of service as an elected union officer; consequently he was not eligible to run for the FPK leadership position. Based on this information, in 2019, the Deputy Chairperson of the Central Committee of the Industrial, Utility and Entrepreneurship Workers' Union, an FPK affiliate, initiated litigation seeking to cancel the decision of the FPK Council to confirm his election. On 9 January 2020, the Supreme Court confirmed that the FPK Council's decision of 16 January 2017 was invalid. On this basis and due to his involvement in the lobbying of the unconstitutional draft Law on Trade Unions in order to expand his powers, on 5 February 2020, the FPK Council relieved Mr Asanakunov of his post. Ms Rysgul Babayeva was elected FPK acting Chairperson.

- 467.** The complainants indicate that the court dismissed Mr Asanakunov's appeal of the Council's decision. According to the complainants, Mr Asanakunov then referred the matter to law enforcement authorities, ranging from regional police departments to the Ministry of the Interior, the Office of the Prosecutor General, members of Parliament and the Chairperson of the Social Policy Committee. The complainants allege that the former FPK Chairperson published negative information regarding trade union activities and defamed members of the FPK Council by making fabricated and vile accusations against them. At the request of Mr Asanakunov, on 7 February 2020, pretrial proceedings were initiated into the alleged falsification of the Council decision of 5 February 2020. Mr Asanakunov has also alleged that US\$100,000 and jewellery disappeared from his office. As part of the investigation into Mr Asanakunov's allegations, following the decision of Sverdlovsky District Court of Bishkek, on 20 March 2020, a safe box – property of the FPK – was seized from the office of the FPK Chairperson. Searches of the FPK Council members' residences were conducted and members of the FPK Council were subject to interrogations.
- 468.** The complainants further allege that on 3 June 2020, the FPK acting Chairperson, Ms Babayeva, while under medical treatment, was forcibly taken by law-enforcement officers to a police station where she was subjected to an interrogation that lasted several hours. The interrogation concerned the procedure of the FPK Council meeting on 5 February 2020 and the decision to remove Mr Asanakunov from his duties. During the interrogation, Ms Babayeva was subjected to psychological pressure and received threats that she could be detained for a longer time. On 9 June 2020, charges were brought against Mr Kanatbek Osmonov, the Chairperson of the Kyrgyz Trade Union of Forestry Workers, under the following provisions of the Criminal Code: section 219 – raiding; section 233 – abuse of power; and section 359 – forgery of documents. The following day, Sverdlovsk District Court in Bishkek placed him under home arrest for two months without the right to use telecommunications and the internet. Later, the term of his home arrest was extended by another two months. Mr Osmonov was, to all intents and purposes, dismissed from his post. According to the complainant, on 3 July 2020, the court decided to dismiss Mr Osmonov from his posts of the FPK Deputy Chairperson and Chairperson of the Trade Union of Forestry Workers. On 21 August 2020, Ms Babayeva was served a notice of charges informing her that she was suspected of committing the following crimes: abuse of power; forgery of documents; and raiding, punishable by up to five years of imprisonment. According to the complainants, in June, July and August 2020, similar notices of charges were served to the following members of the FPK Council: Mr Sultakeyev, Chairperson of the Trade Union of Construction and Industrial Building Materials Workers of Kyrgyzstan; Mr Agliulin, Chairperson of the Jلال-Abad Regional Council of Trade Unions; and Mr Toktogulov, Chairperson of the Central Committee of the Education and Research Workers' Union of Kyrgyzstan. According to the complainants, Mr Sultakeyev was also removed from his post. In their later

communications, the complainants informed that on 26 February 2021, the pretrial proceeding against Messrs Osmonov, Agliulin and Sultakeyev and Ms Babayeva were terminated because of the absence of criminal elements in their actions. All previously imposed measures against these persons were cancelled. Not agreeing with the investigator's order, Mr Asanakunov applied to the Sverdlovsky District Court of Bishkek to cancel the order of the investigator and to resume the investigation. On 1 April 2021, the Court cancelled the order of the investigator. The trade union appealed to the Judicial Board of Bishkek City Court, which, by a decision of 26 April 2021, left the ruling of the district court unchanged. With this, according to the complainants, the criminal investigation could be resumed and the persecution of trade union leaders continue.

- 469.** The complainants further allege that as part of the examination of the draft Law on Trade Unions, an ad hoc Committee of Members of Parliament was set up under the supervision of a Member of Parliament, Mr T. Tillayev. The complainants allege that he exceeded his authority by ordering the State Service for Combatting Economic Crimes to look into the financial and economic activities of trade unions, including the legality of deducting and spending 1 per cent of trade union member dues deducted from workers' salaries, as well as allocating trips for health cures. A senior investigator of the Investigations Department of the State Service for Combatting Economic Crimes decided to open an audit. On 18 June 2020, an investigating judge of the Bishkek Pervomaisky District allowed original accounting documents of the FPK and of its 26 sectoral and regional trade union associations for the period 2015–20 to be seized. The decisions taken by the investigator and the investigating judge were appealed, but the pressure and the demand to submit financial accounting documentation for auditing continue. As a result, FPK work is paralysed, as its bank accounts have been frozen, making it impossible to pay wages to its employees and carry out regular activities. According to the complainants, in total, since October 2019, the ad hoc Committee of parliamentarians mandated to examine the implementation of the Law on Trade Unions has initiated and renewed over 52 criminal cases related to the activities of trade unions in the country.
- 470.** The complainants further allege that in the autumn of 2020, the head of the investigation group of the Bishkek State Department of the Interior requested the court to suspend Ms Babayeva from her post of FPK acting Chairperson. On 12 November 2020, the Sverdlovsky District Court of Bishkek ruled in favour of suspension until the pretrial proceedings were completed and the case was heard in court. This court ruling cannot be appealed. On 21 November 2020, the ad hoc Committee decided that the Government and the General Prosecutor's Office should suspend the elections of the FPK chairperson and chairpersons of all sectoral trade unions to allow it to complete its investigation of trade unions. The FPK was informed thereof by the Vice Prime Minister on 23 November 2020.
- 471.** The complainants indicate that at the end of December 2020, Mr Asanakunov, with the support of members of Parliament and some representatives of the Government, in pursuit of the goal of obtaining the powers and rights to dispose of assets, financial and main funds of the FPK, organized and held a meeting announced as a "Special XXIV Congress of the FPK". The said "Special Congress" was held on the basis of the decision of the Organizing Committee for the Preparation for a Special XXIV Congress of the FPK dated 18 December 2020. The complainants consider that the decision of the Organizing Committee for the Preparation for a Special XXIV Congress, the Special XXIV Congress of the FPK held on 25 December 2020, as well as the decisions it adopted are invalid. The FPK appealed to the Pervomaisky District Court of Bishkek. On 18 March 2021, the Court ruled on interim measures. In particular, it forbade the defendants (Mr Asanakunov et

al.) to own, use and dispose of the fixed assets and properties of the FPK; to participate and vote in meetings of the FPK Council, to organize and conduct extraordinary and regular FPK congresses; to sign documents and make any decisions regarding personnel issues and issues of financial and economic activities of the FPK, the Office of Health Resort and Tourist Organizations and health resort institutions of the FPK; to apply to any financial, credit and banking institutions representing themselves as leaders of the FPK in order to open bank accounts on behalf of the FPK and conduct any financial transactions on bank accounts belonging to the FPK; or to represent themselves as leaders of the FPK in dealings with the tax authorities, statistical authorities, the Social Fund and other Government agencies. The accounting department of the FPK is forbidden to issue any cash payments and material valuables to the defendants. Due to the fact that the ruling of the District Court is subject to immediate execution, an application was submitted to the Bailiff Service Unit. However, the defendants having access to the administrative building of the FPK, vehicles, other assets and documentation, disregarded the order. The bailiff filed an application to the Department of Internal Affairs of Pervomaisky district of Bishkek. On 26 April 2021, Bishkek City Court, having considered the private complaint of Mr Asanakunov et al. against the ruling of the Pervomaisky District Court of Bishkek dated 18 March 2021, refused to satisfy the complaint and left the ruling of the court of the first instance in force. Mr Asanakunov et al. filed a cassation appeal to the Supreme Court, the consideration of which was expected in June 2021.

- 472.** The complainants allege that Mr Asanakunov, with the support of his wife, a Member of Parliament, Ms Moldobekova, puts pressure on the regional trade union councils to paralyse their activities, and refer in this respect to the case of Jalal-Abad Regional Council of Trade Unions, where the Chairperson had been allegedly ousted and replaced by the deputy.

## B. The Committee's conclusions

- 473.** *The Committee regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested observations and information in time, even though it has been asked to do so several times, including through an urgent appeal made at its June 2021 meeting. Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 474.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. While this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31].*
- 475.** *The Committee notes that the complainants in this case, the GMPK, IndustriALL Global Union, the Trade Union of Food and Processing Industry Workers of the Kyrgyz Republic and the FPK put forward the following two sets of allegations: (1) if adopted, the draft Law on Trade Unions pending in Parliament would violate freedom of association and collective bargaining rights; and (2) interference by the State authorities in the internal governance and matters of the FPK and its affiliates, as well as pressure on their leaders. The Committee notes that the complainants allege that the draft Law on Trade Unions was prepared by members of*

Parliament without any consultation and discussion with trade unions and employers' organizations. It was submitted to Parliament on 27 May 2019, adopted in the third reading on 31 March 2021 and sent to the President for signing. The President formulated several objections and sent it back to Parliament with an instruction to form a conciliation commission with representatives of the Cabinet of Ministers, associations of employers and trade unions to prepare an agreed upon draft legislation. The Committee understands from publicly available information that since the last communication of the complainants, on 30 June 2021, the new draft was adopted by Parliament and sent to the President for signing. The President vetoed the draft once again.

- 476.** The Committee notes the complainants' allegation that the draft Law was prepared without consultations with the social partners and in this respect recalls that on numerous occasions it has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1540]. The Committee also recalls that tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy [see **Compilation**, para. 1532]. The Committee understands that the draft Law on Trade Unions emanates from members of Parliament and not from the Government. It recalls nevertheless that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, para. 46].
- 477.** The Committee observes that in its latest comments, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted 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, the draft Law on Trade Unions (first version) imposed a trade union monopoly. The Committee notes from these comments that in its report, the Government indicated that in its opinion, some of the draft provisions were not in conformity with the national legislation, the Constitution and international labour standards. The Committee welcomes the fact that for this reason among others the President vetoed the first version of the draft Law.
- 478.** From a publicly available version of the second version of the draft Law on Trade Unions which was also vetoed by the President on technical grounds, the Committee notes, in particular, that while the draft no longer imposes a trade union monopoly, it explicitly singles out the FPK as the only representative of workers in the social dialogue at national level, provides it with exclusive rights and regulates in detail its rights, organization and structure (Chapter 3, as well as sections 15(3) (1), 16(2) and 17(2)). These sections raise concerns similar to those set out in the original complaint in respect of the first draft. The Committee further considers that legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. It recalls that freedom of association implies the right of workers and employers to elect their representatives in full freedom and to organize their administration and activities without any interference by the public authorities [see **Compilation**, para. 666].
- 479.** Regarding the right of retired persons to join trade unions (section 1(2)), the Committee recalls that the right to decide whether or not a trade union should represent retired workers for the defence of their specific interests is a question pertaining to the internal autonomy of all trade unions [see **Compilation**, para. 413].
- 480.** Regarding the obligation for the statutory aims and objectives of lower-level trade unions (primary and sectoral) to correspond to the statutes of the higher-level union to which they are affiliated (section 7, paragraph 5 and section 8, paragraph 5), the Committee recalls that, as a rule, the autonomy of trade unions and higher-level organizations, including as regards



*their various relationships, should be respected by public authorities. Legal provisions impinging on this autonomy should therefore remain an exception and, where deemed necessary by reason of unusual circumstances, should be accompanied by all possible guarantees against undue interference [see **Compilation**, para. 583].*

- 481.** *The Committee further notes that section 25 imposes onerous responsibilities on trade unions (inter alia, an obligation to publish in the mass media an annual report on their financial and economic activities, an obligation to submit to the employer and to the Cabinet of Ministers information on the implementation of collective bargaining agreements, including on the measures aimed at improving health and well-being of workers, an obligation to ensure that its members respect the national legislation on the organization and conduct of strikes, peaceful meetings, marches, pickets and demonstrations; etc.). The Committee considers that such additional obligations imposed on trade unions may entail a danger of interference by the public authorities in the administration of trade unions and that this interference may be of such a nature as to restrict the rights of organizations or impede the lawful exercise thereof. The Committee recalls that control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions [see **Compilation**, para. 711]. In this respect, the Committee notes the complainants' indication that in addition to the proposed obligation to publish a report in the mass media, trade unions must currently file their annual report with three different State authorities.*
- 482.** *Observing that the draft Law has once again been returned to the Parliament for reconsideration, the Committee requests the Government to take the necessary measures to ensure that any draft Law on Trade Unions being considered will be the subject of full and meaningful consultations with the social partners and bear in mind the conclusions above. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard should it so desire.*
- 483.** *The Committee notes the allegations of interference into internal governance of the FPK and its affiliates. The Committee observes that while some of the matters raised by the complainants are the results of internal conflicts within the FPK and/or its affiliates, others relate to the numerous and continuing investigations of trade unions by the State authorities. The Committee recalls that the Government has an obligation to adopt a completely neutral attitude in disputes within the trade union movement [see **Compilation**, para. 1612]. The Committee observes, however, that the allegations in this case would appear to indicate that the FPK internal conflict had been exploited by at least some State authorities, which has resulted in numerous investigations and psychological pressure exercised on trade union leaders, thereby paralysing the work of the FPK and some of its affiliates. The Committee urges the Government to conclude without further delay any pending investigations involving the FPK and its affiliates, to return all documents concerning their internal administration and to ensure that its bank accounts can be used to conduct their legitimate trade union activities. The Committee urges the Government to inform it of all developments in this regard. Further noting the alleged request of the ad hoc Parliamentary Committee (mandated to examine the implementation of the Law on Trade Unions) to suspend the election to the position of the FPK chairperson as well as to the leadership positions of its affiliates until the completion of all investigations, the Committee requests the Government to provide its observations thereon without delay and recalls in this respect that freedom of association implies the right of workers and employers to elect their representatives in full freedom [see **Compilation**, para. 585] and that the public authorities should refrain from any interference which might restrict the exercise of the right of workers' organizations to elect their own representatives*



*freely, whether as regards the holding of trade union elections, eligibility conditions or the re-election or removal of representatives [see **Compilation**, para. 590].*

**484.** *The Committee draws the legislative aspects of this case to the attention of the CEACR.*

## The Committee's recommendations

**485.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following:

- (a) The Committee regrets that the Government has not replied to the allegations in this case, even though it has been asked to do so on several occasions, including through an urgent appeal, and requests it to reply as soon as possible.
- (b) The Committee requests the Government to take the necessary measures to ensure that any draft Law on Trade Unions being considered will be the subject of full and meaningful consultations with the social partners and bear in mind the conclusions above. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard should it so desire.
- (c) The Committee urges the Government to conclude without further delay any pending investigation involving the FPK and its affiliates, to return all documents concerning their internal administration and to ensure that its bank accounts can be used to conduct their legitimate trade union activities. The Committee urges the Government to inform it of all developments in this regard.
- (d) The Committee requests the Government to provide its observations without delay on the alleged request of the ad hoc Parliamentary Committee (mandated to examine the implementation of the Law on Trade Unions) to suspend the election to the position of the FPK chairperson as well as to the leadership positions of its affiliates until the completion of all investigations.
- (e) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Case No. 3193

Definitive report

**Complaint against the Government of Peru  
presented by  
the Single Union of Peruvian Education Workers (SUTEP)**

**Allegations: The complainant alleges that the Ministry of Education refused to formally and officially establish a direct negotiation committee for collective bargaining**

- 486.** The complaint is contained in a communication from the Single Union of Peruvian Education Workers (SUTEP) dated 12 November 2015.
- 487.** The Government sent its observations in communications dated 29 November 2016, 14 February 2017 and 13 November 2020.
- 488.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

## A. The complainant's allegations

- 489.** The complainant alleges the refusal of the Ministry of Education to formally and officially establish a direct negotiation committee for collective bargaining in the education sector in 2015.
- 490.** The complainant indicates that the establishment of a direct negotiation committee is a means of peaceful social dialogue for collective bargaining and that year after year committees for direct negotiation with the Ministry of Education had been established to address the problems and demands of teachers. Hence, in 2012, 2013 and 2014 the Ministry of Education had issued decisions establishing the corresponding committees for the negotiation of lists of demands between this Ministry and the complainant and the appointment of its representatives on the committees.
- 491.** In January 2015, the complainant submitted to the Ministry of Education official communications Nos 005-2015-CEN-SUTEP and 016-2015-CEN-SUTEP containing the corresponding list of demands and informing the Ministry of the appointment of its representatives for the establishment of the direct negotiation committee.
- 492.** The complainant indicates that in October 2015, the Ministry of Education informed it, by means of official communication No. 2697-2015-MINEDU/VMGP-DIGEDDDITEN, that as both supreme decrees governing the establishment of the committee for direct negotiation with the complainant had been revoked in 2014, no decision establishing the committee had been issued for the current year.
- 493.** The complainant states that various international trade union organizations expressed their displeasure and concern to the Government over the non-establishment of the direct negotiation committee, such as the Confederation of Education Workers of the Republic of Argentina, the National Confederation of Workers of Educational Establishments of Brazil and the Regional Committee of Education International for Latin America.
- 494.** The complainant considers that the refusal of the Ministry of Education to formally and officially establish the direct negotiation committee violated its fundamental rights to freedom of association and collective bargaining, because it undermined its members' capacity for dialogue and dispute resolution. Consequently, the complainant requests the Committee to recommend to the Government and/or urge it to establish the corresponding direct negotiation committee.

## B. The Government's reply

- 495.** By communications dated 29 November 2016, 14 February 2017 and 16 November 2020, the Government indicates that in 2014, Supreme Decree No. 040-2014-PCM revoked the regulatory provisions, specifically Supreme Decrees Nos 003-82-PCM and 026-82-JUS, governing the establishment of committees for direct negotiation between representatives of the complainant's National Executive Committee and the

Ministry of Education by means of collective bargaining on the complainant's list of demands.

- 496.** The Government specifies that article 41(k) and (n) of the Teaching Reform Act, which has been in force since 2012, recognizes teachers' rights to freedom of association and to organize as well as to enjoy working conditions that assure quality in the teaching and learning process and the efficient exercise of their duties. The Government also indicates that the regulations of the Teaching Reform Act that were adopted in 2013 originally did not contain any provisions on collective bargaining in the education sector, as the matter was governed by the aforementioned supreme decrees, which were in force until they were revoked in 2014.
- 497.** The Government indicates that in 2015 the Ministry of Education prepared a draft supreme decree governing collective bargaining and the establishment of direct negotiation committees in the education sector. In 2016, the Ministry finally adopted Supreme Decree No. 013-2016-MINEDU, which incorporated provisions on collective bargaining in the regulations of the Teaching Reform Act (article 207(a) and 207(b)). Those provisions govern, inter alia, the general aspects and procedure for collective bargaining.
- 498.** The Government states that Supreme Decree No. 013-2016-MINEDU allows the establishment of committees for direct negotiation between the complainant and the Ministry of Education and that the adoption of this supreme decree demonstrates the Government's intention to implement dialogue forums that prevent disputes and promote the harmonious resolution of the complainant's demands.
- 499.** The Government informs the Committee that as a result of the adoption of Supreme Decree No. 013-2016-MINEDU, a committee for direct negotiation between the complainant and the Ministry of Education was established. Through General Secretariat Decision No. 447-2016-MINEDU, the committee was set up in 2016 to negotiate the list of demands between the parties and to appoint their representatives to the committee.
- 500.** The Government considers that the allegations in the present complaint were overcome with the adoption of Supreme Decree No. 013-2016-MINEDU and the subsequent establishment of a committee for direct negotiation between the complainant and the Ministry of Education.
- 501.** Lastly, the Government indicates that during the period to which the complaint refers, the Ministry of Education always maintained a policy of holding meetings for dialogue with the representatives of the complainant organization's National Executive Committee, during which various topics related to teaching at the national level were examined.

## C. The Committee's conclusions

- 502.** *The Committee observes that the complainant organization alleges that in 2015 the Ministry of Education refused to formally and officially establish the direct negotiation committee for collective bargaining within the education sector.*
- 503.** *The Committee notes that the complainant indicates that year after year, committees for direct negotiation between it and the Ministry of Education had been established pursuant to the decisions adopted by this Ministry and that, however, in 2015 it submitted a list of demands and the Ministry of Education declined to formally and officially establish a direct negotiation committee, on the grounds that the two supreme decrees governing the establishment of such a committee had been revoked. The complainant considers that the situation described above*

*violated its fundamental rights to freedom of association and collective bargaining, and requests the Committee to recommend to the Government and/or to urge it to establish the corresponding direct negotiation committee.*

- 504.** *Furthermore, the Committee notes the Government's observations stating that in 2016 the Ministry of Education adopted Supreme Decree No. 013-2016-MINEDU (the draft of which was prepared, also by the Ministry of Education, in 2015) in order to incorporate into the Teaching Reform Act specific provisions on collective bargaining governing the general aspects and negotiation procedure within the education sector. The Government states that the above-mentioned supreme decree allowed the subsequent establishment of a committee for direct negotiation between the complainant and the Ministry of Education and the appointment of its representatives to the committee by virtue of the adoption of the General Secretariat Decision No. 447-2016-MINEDU. The Government states that, during the period to which the complaint refers, the Ministry of Education always maintained a policy of holding meetings for dialogue with the representatives of the complainant organization's National Executive Committee, in which various matters related the teaching profession at the national level were discussed.*
- 505.** *While duly noting the information provided by the Government, in particular on the adoption and validity of a normative framework governing collective bargaining in the education sector and on the informal dialogues held between the Ministry of Education and the complainant in the period to which the complaint refers, the Committee understands from publicly available information that the Ministry of Education and the complainant have continued to establish direct negotiation committees in recent years.*
- 506.** *Lastly, the Committee observes that since the submission of the complaint, it has not received any additional information from the complainant. In these circumstances, and taking account of the information provided by the Government, the Committee will not pursue its examination of this case.*

## **The Committee's recommendation**

- 507. In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.**

Case No. 3185

Interim report

**Complaints against the Government of the Philippines presented by**

**– the National Confederation of Transport Workers’ Unions of the Philippines (NCTU)**

**– the Center of United and Progressive Workers of the Philippines (SENTRO) and**

**– the International Transport Workers’ Federation (ITF) and**

**joined by**

**– the Federation of Agricultural Workers Philippines (UMA) and**

**– the National Federation of Sugar Workers – Food and General Trade (NFSW-FGT)**

**Allegations: The complainant organizations allege the extra-judicial killings of three trade union leaders and denounce the failure of the Government to adequately investigate these cases and bring the perpetrators to justice. The complainants further allege the use of threats and murder attempts against a fourth trade union leader and his family, who have been forced into hiding, and denounce the Government’s failure to adequately investigate this case and protect the victims. The failure to investigate and prosecute in these cases would have reinforced the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights. Additional allegations refer to further cases of extra-judicial killings of trade union members and leaders in Manila and in the agricultural sector in Negros Island, as well as illegal arrests, detention, red-tagging, intimidation and harassment of trade union members and leaders**

**508.** The Committee last examined this case at its October 2019 meeting, when it presented an interim report to the Governing Body [see 391st Report, paras 523–532 approved by the Governing Body at its 337th Session]. <sup>7</sup>

**509.** The International Transport Workers’ Federation (ITF) provided additional information in a communication dated 2 March 2021. In a communication dated 22 June 2021, the Federation of Agricultural Workers Philippines (UMA) and the National Federation of Sugar Workers – Food and General Trade (NFSW-FGT) joined the case and provided additional allegations.

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<sup>7</sup> [Link to previous examination.](#)

**510.** The Government provided its observations in a communication dated 27 January 2021.

**511.** The Philippines has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. Previous examination of the case

**512.** At its October 2019 meeting, the Committee made the following recommendations [see 391st Report, para. 532]:

- (a) Stressing the importance which it places on rapidly identifying the perpetrators of violence against trade unionists and bringing them to justice in order to combat impunity and promote a climate free from violence, intimidation and fear in which freedom of association may be fully exercised and recalling that the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013, the Committee once again expresses its firm expectation that the perpetrators will be brought to trial and convicted without further delay and trusts that the Government will continue to make every effort in this regard. The Committee requests the Government to keep it informed of the progress made, including the current status of these cases, and to provide a copy of the relevant judgments as soon as they are handed down.
- (b) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

## B. Complainants’ additional allegations

**513.** On 2 March 2021, the ITF submitted additional information in respect of allegations of the extra-judicial killing of a trade union leader by reason of his legitimate trade union activities. In particular, the ITF denounces that following a number of death threats, Mr Leonardo Escala, President of the Nagkakaisang Manggagawa sa Pantalan Incorporated (NMPI-ICTSI), the union representing dock workers at the International Container Terminals Services Inc. Manila Terminal, and his niece were shot multiple times outside his home in Tondo, Manila, as a result of which Mr Escala passed away at the local hospital. The ITF further expresses its concern as to the number of extra-judicial killings of trade unionists, the failure of the authorities to provide adequate protection to trade union representatives and the prevailing culture of impunity for these crimes.

**514.** In their communication dated 22 June 2021, the UMA and the NFSW-FGT provided additional information, alleging serious violations of human and trade union rights committed by the regime, especially in the agricultural sector, including through the implementation of the 2018 Memorandum Order No. 32 to suppress lawless violence and acts of terror. The allegations refer to numerous incidents of extra-judicial killings, illegal arrests, detention, red-tagging, harassment, threats and intimidation against trade union members and leaders in Negros Island.

**515.** In particular, the complainants allege that a member of the UMA was killed in September 2016 and that since January 2017, 98 people were victims of extra-judicial killings in Negros Island, out of which 16 were members and leaders of the NFSW-FGT. The complainants denounce the following concrete incidents:

- On 7 September 2016, Ariel Diaz (Chairperson of Danggayon Dagiti Mannalon ti Isabela and member of UMA’s organizing team in Delfin Albano, Isabela) was shot on his farm by three men in civilian clothes.



- On 20 January 2017, Alexander Ceballos (NFSW–FGT coordinator in Salvador Benedicto and Murcia, regional council member of the NFSW–FGT and leader of 50 sugar cane farmers) was shot dead in front of his house at Purok Tangke, Barangay Pandanon Silos, Murcia, Negros Occidental by two unidentified men on a motorcycle who are believed to be connected to the mayor of Salvador Benedicto. The Murcia police chief confirmed that Mr Ceballos had received threats to his life before he was killed. According to the complainants, no case was filed in court and the police investigation into the incident did not give any results, even though Mr Ceballos had been the target of threats and intimidation by the Dela Cruz clan for a long time. For instance, in July 2015, armed gunmen fired at a vehicle where his son was in, allegedly targeting Mr Ceballos.
- On 21 December 2017, Flora Gemola (city Chairperson of the NFSW–FGT in Sagay City) was found dead in the farm awarded to her by the Department of Agrarian Reform earlier that day in Hacienda Tilapas, Barangay Rafaela Barrera, Sagay City, Negros Occidental. One of her relatives found her with eight stab wounds. The city police chief indicated that Ms Gemola was probably followed by two or more suspects due to a land conflict, that a confrontation ensued between them, triggering the suspects to commit the crime and that the police already identified persons of interest.
- On 22 February 2018, Ronald Manlanat (member of a local chapter of the NFSW–FGT in Hacienda Joefred, Barangay Luna, Sagay City, Negros Occidental) was shot several times in the head by unknown assailants with a rifle while working in the fields. Mr Manlanat and other NFSW members in Hacienda Joefred had previously received threats for their work in the lands and Mr Manlanat was also accused of being involved in a New People’s Army (NPA) raid in 2016. According to the complainants, calls for investigation into Mr Manlanat’s death have yielded no results.
- On 27 June 2018, Julius Broce Barellano (Chairman of Hacienda Medina Farmworkers’ Association under the NFSW–FGT) was shot by two unidentified assailants outside his house in Sitio Cotcot, Hacienda Medina, Barangay Rizal, San Carlos City, Negros Occidental. Mr Barellano’s wife witnessed how he tried to run towards their house but was chased and shot by the gunmen at close range. The police recovered ten fired bullets, four live ammunition and a slug from a pistol. Mr Barellano was at the forefront of an ejectment case against an influential landlord involving about 140 tenants in Hacienda Medina. A murder case has been filed in San Carlos regional trial court.
- On 20 October 2018, six to ten unidentified masked men fired upon the makeshift tent where farm workers of Hacienda Nene-Barbara, Barangay Bulanon, Sagay City, Negros Occidental were resting, instantly killing nine of them – Eglicerio Villegas, Angelife E. Arsenal, Paterno M. Baron, Rene P. Laurencio Sr., Morena F. Mendoza, Marcelina D. Dumaguit, Rannel H. Bantigue, Jomarie S. Ugahayon Jr. and Marchel Sumicad. Three of the victims – Morena F. Mendoza, Marcelina D. Dumaguit and Rannel H. Bantigue – were burnt by the suspects. Three other workers survived the incident. The victims were members of a farmers’ association affiliated to the NFSW–FGT. According to the complainants, the armed men are suspected thugs of the land owner and Special Civilian Auxiliary Army (SCAA) paramilitary elements under the Armed Forces of the Philippines (AFP).
- On 7 June 2019, Felipe Dacal-Dacal (an active member of the NFSW–FGT in Escalante, Negros Occidental) was identified as a member of the NPA by Marlon “Astro” Fajardo and when he denied the accusations, the suspect repeatedly shot him at his home in

Barangay Pinapugasan, Escalante, Negros Occidental and fled. Before the incident, soldiers tried to convince Mr Dacal-Dacal three times to stop joining rallies but he did not comply. The complainants allege that Marlon “Astro” Fajardo is an intelligence officer from the AFP.

- On 23 June 2020, Jose Jerry Catalogo (officer of a local farmers’ association under the NFSW-FGT) was shot close to his house in Barangay Paitan, Escalante City, Negros Occidental. His wife found him with two shots in the head and chest, as well as broken arms and legs. According to the initial report by the police, about three to four assailants were responsible for the killing of Mr Catalogo, who had indicated several days before the incident that he was being followed by unidentified individuals.
- On 2 February 2021, Antonio “Cano” Arellano (Chairman of a peasant organization under the NFSW-FGT in Barangay Jonob-Jonob, Escalante City, Negros Occidental) was shot dead by four unidentified suspects.

**516.** The complainants also denounce numerous incidents of illegal arrests, detention and fabricated cases against more than 100 farmers, workers and human rights activists, including members and leaders of the NFSW-FGT and UMA-affiliated unions, some of whom are currently in detention. They point to the following concrete incidents:

- On 17 June 2017, AFP soldiers illegally arrested Ricky Omandam (member of the Union of Common Agricultural Workers (OGYON) – a local organization of farm workers in Barangay New Eden, Pangantucan, Bukidnon, affiliated to the UMA). Mr Omandam was brought to the military detachment in Madaya and detained for unknown charges.
- On 19 July 2017, armed members of the Bukidnon Philippines National Police (PNP) Provincial Public Safety Company forcibly entered the house of Alfredo Omandam in Barangay New Eden, Pangantucan, Bukidnon, searched the house without a warrant and not having found any illegal objects, dragged him to the plaza where he was accused of possessing live ammunition. He was later taken to Malaybalay City together with his wife, who was released the next day. Mr Omandam and his wife are both members of the OGYON, which demands wage increases for plantation workers.
- On 8 October 2017, following an attack by alleged members of the NPA against the Del Monte Company compound, Angelica Pavorada Regasajo (an agricultural worker and member of OGYON from Barangay Merangeran) was forcibly taken by soldiers and accused of illegal possession of live ammunition. On the same day, a number of armed soldiers entered the residence of her mother, illegally searched the house, then left and when they came back they allegedly found the live ammunition they claim is owned by Ms Pavorada Regasajo. She was taken to the police station in Quezon, Bukindon, illegally detained and a criminal complaint was filed against her. She was also told by the police that her husband was accused of being a member of the NPA.
- On 3 July 2018, six women (members of OGYON) were accused of supporting the NPA, illegally arrested by the AFP and detained in the military detachment in Madaya.
- On 22 October 2018, Julie Balvastamen and Susanu Aguaron (members of OGYON) were illegally arrested and detained by members of the police and the armed forces at a checkpoint in Lumbo, Valencia City, Bukindon. They were planning to conduct a vigil in front of the checkpoint and following their collective insistence on their rights to peaceful protest, they were later released.

- On 19 December 2018, Ricky Cañete (NFSW-FGT leader in Sagay City) was arrested in Barangay General Luna, Sagay City, Negros Occidental by bonnet-clad Sagay City police and accused by the government authorities of being involved in an NPA raid in May 2016. He is currently in detention and is facing fake charges of frustrated murder and two counts of murder.
- On 2 June 2019, Edilberto Sangga (NFSW-FGT member) was illegally arrested on fake charges of trespassing and three of his household staff were also detained by around 40 members of the AFP who stormed their community and planted evidence.
- On 18 September 2019, Rolly Hernando, Joel Guillero, Leon Charito, Buenvinido Ducay, Kenneth Serondo, Carlo Apurado, Reynaldo Saura and Aiza Gamao (members and leaders of NFSW-Teatro Obrero and of the urban organization Kadamay) were arrested in Barangay Jonob-Jonob, Escalante City, Negros Occidental. They were part of the public information team going around various cities in northern parts of Negros and informing the public about upcoming activities related to the Escalante Massacre Anniversary on 20 September 2019. They were flagged down by men dressed in civilian clothes and wearing bonnets who demanded to see their permits for the activity and asked them to stand away from their vehicle. The complainants allege that the men planted two pistols and empty rum bottles in the vehicle, seized the mobile phones of the activists and deleted photos of the incident which some of them were documenting. The activists were then brought to the Escalante police station where the police allegedly confiscated five pistols, a revolver, a machine gun, three rifle grenades, two improvised explosive devices, 21 Molotov cocktails and assorted ammunition. The detained workers are facing charges of illegal possession of firearms and explosives and three of them who are NFSW-FGT members – Joel Guillero, Leon Charito and Buenvinido Ducay – are currently detained.
- On 31 October 2019, John Milton Lozande (Secretary-General of the NFSW-FGT) was among the 57 persons who were arrested in a raid conducted by the joint elements of the AFP, Special Action Force (SAF) (elite unit of the PNP) and the Criminal Investigation and Detection Group officers in the offices of Kilusang Mayo Uno (KMU) and Bayan. While the raid was conducted with search warrants from Quezon City Regional Trial Court Branch 89, the raiding teams simply barged into the compound without declaring their purpose or showing the search warrants, forced their way with high-powered long arms pointed at people, ordering them to drop face down on the ground, while the other raiding personnel went inside the buildings, destroying and ransacking everything. Several hours later, when two Barangay councillors arrived, the leader of the raiding team stated that the search could officially start and that is when stacks of planted hand guns and explosives were found in various parts of the office. Simultaneously and in the same manner, a raid was also conducted in the NFSW-FGT office, Gabriela office and one residential house, during which Danilo Tabura (NFSW-FGT paralegal officer) and Roberto Lachica (NFSW-FGT building caretaker) were arrested. A total of 25 pistols and a hand grenade were planted by government security forces in the said offices.
- On 1 November 2019, Imelda Sultan (a long-time organizer and district office staff of NFSW-FGT for more than 20 years) was arrested in the NFSW-FGT District Office in Barangay Balintawak by elements of Escalante City Police, Special Weapons and Tactics (SWAT), PNP/SAF and elements of the AFP. The government troops were able to plant 3 pistols with 17 bullets, 7 grenade launcher ammunition, 2 improvised explosives, 3 mobile phones and subversive documents. Lindy Perocho (a district office staff of the NFSW-FGT) was also arrested in her house in Barangay Jonob-Jonob

by elements of Escalante City Police, PNP/SAF and members of the AFP. The government troops planted two pistols and three grenade launcher ammunition in her house. Both victims were arrested on the same day by virtue of search warrants issued by the Quezon City Regional Trial Court Branch 89 and are currently in detention.

- On 16 December 2019, Ariel Ronido (Chairperson of OGYON) and his brother-in-law Edgardo Andales were illegally arrested by the AFP and brought to the military detachment in Madaya. Mr Andales was released the next day but Mr Ronido continued to be detained. When a member of the family visited the camp two days later, he was not allowed to see Mr Ronido and he cannot be reached on his phone.
- On 31 January 2020, Rene Manlangit (Chairperson of the NFSW-FGT in Hacienda Nene, Purok Fire Tree, Barangay Bulanon, Sagay City, Negros Occidental) and Rogelio Arquillo Jr. (NFSW-FGT member in Hacienda Nene) were both charged by the PNP for multiple murder during the Sagay massacre in October 2018, even though they were survivors of this massacre and had relatives who were victims. A warrant of arrest had been issued against them and they are hiding in a safe place while their case is being held in court. Before the Sagay massacre, in April 2018, an AFP brigade, based in Negros, issued a statement claiming that the NFSW-FGT's *bungkalan* [farm workers who cultivate small portions of land on large haciendas to feed their families] were part of land-grabbing efforts of the rebels that finance the NPA and other organizations' operations in the region. The NFSW-FGT and UMA condemned this dangerous statement by the military, which clearly signalled the perpetration of fierce attacks against farmers by suspected state-agents throughout Negros Island.
- On 9 June 2020, Gaspar Davao (NFSW-FGT district coordinator and organizer in Northern Negros) was arrested by joint elements of the Cadiz City Police and the AFP at a check point at Barangay Caduhaan, Cadiz City. During the arrest, the authorities stopped the vehicle informing the passengers that they were looking for a person infected by COVID-19 who was to be placed in a quarantine. When Mr Davao got off, a member of the AFP immediately pinpointed him as the one who was infected and ordered the driver of the vehicle to proceed to its destination without checking the other passengers on board. The police and the armed forces then forcibly brought Mr Davao to Cadiz City police station and took away his bag, without informing him about the real reasons for his arrest. The next day, he was made to face reporters with his bag on the table in front of him, which contained a fragmentation grenade, documents he did not own and his personal belongings. He is presently detained in Negros Occidental District Jail.

**517.** The complainants further allege numerous incidents of red-tagging, harassment, intimidation and other threats against trade union members and leaders intended to repress unionism and instill fear among union members:

- In March 2018, Godfrey Palahang (organizer from OGYON and from the Rural Missionaries of the Philippines – Northern Mindanao Region) was forced to surrender as an alleged NPA rebel because of his engagement with activist organizations.
- Since 2018, Guillermo “Ka Gimo” Hernandez (the UMA's former Chairperson, the Secretary-General of Kaisahan ng mga Manggagawang Bukid sa Batangas (KAISAHAN) and the sugar field representative on the District Tripartite Council in the sugar industry) has been subject to harassment: in February 2018, elements of the AFP and the Philippine Air Force were asking for his whereabouts; in July 2018, the military and the police set up a military detachment in the community of

Mr Hernandez; and in August 2018, two military trucks with soldiers and police officers were looking for Mr Hernandez near his house. As a result, he and his wife, who are both on the terrorist proscription list of the Government, cannot go home.

- In 2018, five members of KAISAHAN were designated as terrorists, including Marilyn Hernandez (NFSW-FGT treasurer), Carlos Sañosa, Jun Delos Reyes, Robert Hernandez and Josefino Castellano.
- In 2018, Sister Patricia Anne Fox, the UMA's missionary volunteer was charged by the Bureau of Immigration (BI) with illegally joining political activities making her an "undesirable alien" and ordering her deportation. The alleged political activities she was involved in were rallies, press conferences and fact-finding missions on human rights violations of the poor and marginalized sectors of the society. On 16 April 2018, BI officials arrested Ms Fox alleging that she was engaged in political activities in violation of her missionary visa. She was detained for almost 24 hours and later released. Finally, the BI downgraded her visa to a temporary visa which expired in November 2018.
- On 4 May 2018, PNP elements and security guards of land owners Perla and Juan Miguel Gonzales, whose grandson is the mayor of Silay City, attempted to demolish the houses of four members of Hacienda San Herman Farm Workers Union-NFSW, namely Celso Gonzales, Celso Salgado, Ernesto Tilacas and Noel Zaragosa, but did not manage to do so due to the resistance of the farm workers. On 21 June 2018, the demolitions were successfully conducted, destroying the houses of the said union members, who now live in a government relocation site. These acts intended to instill fear among the workers to incite them to withdraw their application for land reform coverage and to repress unionism.
- On 8 July 2018, 30 members of the AFP encamped around 30 metres from the house of Hasil Delima (NFSW-FGT member) in Sitio Aniya, Winaswasan, Calatrava.
- On 4 August 2018, more than 100 security guards of the Diamond Factor Corporation management began to destroy plants in the farm lots of the Aidsisa Farmers and Farm Workers Association (AFFWA-NFSW) in Aidsisa, Barangay E Lopez, Silay City, Negros Occidental. While the security guards were damaging plants, other guards fired guns in the air to instill fear among the farmers and farm workers. According to the complainants, the possible motive was to threaten the residents and farms workers and incite them to withdraw their application for land reform coverage of the land claimed by the company. AFFWA-NFSW members still live in fear.
- On 16 November 2018, indiscriminate firing by around 100 elements of the AFP, PNP/SAF and the Joint Investigating Task Group in Sitio Puting Bato, Washington, Escalante City resulted in forced evacuation, controlled ingress/egress of the community, illegal encampment near households, illegal search and illegal detention, affecting 11 families with 21 individuals, including PAMALAKAYA and NFSW-FGT members.
- On 1 February 2019, armed uniformed personnel ransacked and illegally searched the houses of Pakigdaet sa Kalambuan (PSK)-NFSW members in Sitio Magtuod, Bugang, Toboso. The soldiers intimidated them by doing a head count, noting the number of males, presumed by the soldiers to be members of the NPA, and also told them that something bad would happen to them if they refused to allow their houses to be searched.



- On 22 February 2019, the armed forces searched the house of Tioliza Iwayan (NFSW-FGT member) in Jonob-Jonob, Escalante City, looking for alleged arms of the NPA but did not find any weapons.
- On 4 March 2019, the house of Arjie Marangga (Secretary-General of NFSW-Toboso and “barefoot correspondent” of the Kaling kag Tugda radio programme) in Neuva Estrella, Barangay General Luna, Toboso, Negros Occidental, was surrounded by elements of the AFP who arrived in the area with one army truck, four vans and several motorcycles. The perpetrators alleged that Ms Marangga accommodated NPA members and told her and her family that something bad would happen to them if they did not withdraw their membership from the NFSW-FGT.
- On 20 March 2019, soldiers intimidated and harassed the residents of Sitio Fuentes, Mabini, Escalante City and ransacked the house of Teddy Canillo (NFSW-FGT Area Organizer in Escalante City, Negros Occidental).
- On 28 March 2019, military men, who introduced themselves as members of the PNP, stormed the community and ransacked the cooperative office and the households of Grace Parreno, Anilyn Serrondo, Chen-Chen Serrondo, Joenel Timplado and Eulando Serrondo (PSK leader), who was also further threatened.
- On 9 April 2019, three men from the National Task Force to End Local Communist Armed Conflict (NTF) told 30 residents of Gaway-Gaway, Jonob-Jonob, Escalante City who attended a meeting of the Panihugsa sang mga Obreros sa Barangay Jonobjonob (POBJ)-NFSW that they were concerned with the problems of the farmers and the POBJ and that they should not join any rallies and mass actions or a warrant would be served on them.
- On 19 April 2019, 113 farmers from 28 farmers’ associations (mostly NFSW-FGT and KMP members) attended a meeting in Escalante City, which served as a red-tagging venue on all progressive organizations, including the NFSW-FGT.
- On 22 April 2019, 40 armed military men stormed the community and intimidated Eulando Serrondo (PSK leader) and other PSK-NFSW members.
- On 24 June 2019, Theresa Aloquina, wife of Aldrin Aloquina (NFSW-FGT Regional Vice-Chairperson) was intimidated and harassed by NTF members who visited their house in Linao II, Balintawak, Escalante City looking for Mr Aloquina. The NTF admitted to her that the NFSW-FGT was legal but that it was backed by another organization.
- On 26 June 2019, Rebecca Bucabal (Chairperson of Panaghiusa sa Obreros sa Barangay Balintawak (POBB)-NFSW) was intimidated and harassed in Balintawak, Escalante City by six NTF members. They asked her to cooperate and clear her name from being a member of “maot” (bad or negative) NFSW-FGT.
- On 4 July 2019, the Silay City police personnel, armed with search warrants, searched the house of Jose Rex Escapalao (Vice-President of Hacienda Raymunda Farm Workers Union-NFSW), planted a revolver, arrested the union officer and charged him with illegal possession of firearms. Mr Escapalao was detained in the Silay City police station for one week and is now free on bail, while his case is in court waiting for the schedule of hearing.
- On 5 July 2019, Susan Pabalate (NFSW-FGT member) was intimidated and harassed by 14 armed NTF members who visited her house in Malasibog, Escalante City.



- On 14 July 2019, armed men in civilian clothes intimidated and threatened the family of Dingding (NFSW-FGT leader in the area) in Hacienda Amparo, Mabini, Escalante City, saying that they would regret it if anything unpleasant happened to their mother if she refused to make a statement that she would surrender as a member of the Communist Party of the Philippines.
- On 14 July 2019, the residents of Minasugang, Tabunac, Toboso were intimidated and harassed during a Barangay Hall meeting by elements of the AFP. They were deceptively informed that a livelihood programme would be discussed in the meeting but were instead asked to surrender guns and weapons in their possession, which they did not have, and to clear their names. They were also forced to submit the names of the officials of their yet-to-be-registered cooperative affiliated to the NFSW-FGT. The records of the cooperative and related documents of their land case are now in the possession of the AFP.
- On 27 and 28 July 2019, 171 residents from Barangays Bandila, Tabunac, Bugang and Magticol in Toboso were forced to join a peace seminar led by the AFP and other local government agencies, with the aim of deradicalizing them. They were also forced to make anti-progressive group placards and red flags painted with a hammer and sickle and were forced to carry them in a protest rally around the town centre, chanting “stop collecting”.
- Since 2019, the military in cooperation with local government units has forcibly taken over the yearly commemoration of the 1985 Escalante massacre with a “peace summit” that has turned into a theatre of surrender with 2,400 supposed rebel returnees. The mayor had refused to give permits to groups that traditionally organized the commemoration and the police and soldiers arrested teams of Teatro Obrero, which performed at every annual commemoration.
- Both the KMU and the UMA, as well as their members, were red-tagged by the National Task Force to End Local Communist Armed Conflict in its 2019 annual report. The Network Resisting the Expansion of Agricultural Plantations in Mindanao (REAP Mindanao), for which the UMA is the national coordinator, was also designated as a communist terrorist group in the agricultural sector.
- On 19 April 2020, an usurpation of authority charge was filed against Ariel Casilao, UMA's incumbent Vice-Chairperson. Mr Casilao was arrested after coming to the aid of six volunteers from the Sagip Kanayuan's relief operations who had been arrested and detained at the Norzagaray police station. He was accused of misrepresenting himself as an incumbent member of the House of Representatives and the case is still pending in court.
- UMA-Isabela was one of the progressive organizations red-tagged by the AFP between May and June 2020. Ripped sacks with names of activists accused of being recruiters for the NPA were hung on trees along major highways in three towns (Isabela, Cagayan and Tuguegarao City) and flyers were also distributed slandering activists as terrorists and recruiters for the NPA. In June 2021, officers of UMA-Isabela were again harassed for alleged links to the NPA – a fake surrender ceremony was organized, in which UMA officers refused to join the soldiers even though police officers and soldiers visited their houses for three days in a row, trying to coerce them to clear their names as NPA rebels. This incident occurred after UMA-Isabela filed a complaint at the Provincial Council of Santa Maria for violation of the minimum-wage law by a bio-ethanol plant, which threatened members of UMA-Isabela with death threats and mass dismissals.

### C. The Government's reply

518. In its communication dated 27 January 2021, the Government reiterates that the allegations of the case have already been addressed by the Government. With regard to the cases of Emilio Rivera and Antonio Petalcorin, the Government points to the conclusions of the Regional Tripartite Monitoring Body – Region XI (RTMB–XI) that a case for murder had been filed and the investigator was conducting follow-up investigation to apprehend the suspect and gather any relevant information and that it could therefore not be said that the State lacked adequate investigations, prosecutions and independent judicial inquiries into the murder.
519. As to the case of Kagi Alimudin Lucman, the Government reiterates that the case was not considered by the Inter-Agency Committee (IAC) as an extra-judicial killing based on the Administrative Order No. 35 Operational Guidelines but was investigated in accordance with regular criminal procedure, which led to a lack of material witnesses.
520. Concerning the case of Carlos Cirilo, the Government states that according to the records, he was not refused police escort, contrary to the allegations and that despite follow-up investigations, no witnesses were found to provide information on the alleged grenade throwing incident at the victim's residence.
521. In relation to the above cases, the Government reiterates that they are being handled and investigated through the regular process of criminal investigation and prosecution and that the availability of the reports relies heavily on police investigations and regular court proceedings, the progress of which may be affected by a number of factors, such as the lack of material witnesses.

### D. The Committee's conclusions

522. *The Committee recalls that the present case concerns allegations of extra-judicial killings of three trade union leaders, an attempted assassination of another unionist and the failure of the Government to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights. Additional allegations refer to another 18 extra-judicial killings of trade union members and leaders in Manila and Negros Island, as well as numerous incidents of illegal arrests, detention, red-tagging, harassment, intimidation and threats against trade union members and leaders in the agricultural sector.*
523. *With regard to the initial allegations and the status of the cases concerning the murders of Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman (recommendation (a)), the Committee notes that the Government reiterates previously provided information that the suspects in the cases of Emilio Rivera and Antonio Petalcorin have an arrest warrant pending against them and a continuing follow-up investigation is being conducted to apprehend the suspects and that the investigation into the case of Kagi Alimudin Lucman showed a lack of material witnesses. The Committee regrets once again that no substantial progress appears to have been made in bringing the perpetrators to justice in the three cases, despite the fact that the murders took place in 2013 and that the Government has indicated on several occasions that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution. Recalling that it is important that investigations into the murders of trade unionists should yield concrete results in order to determine reliably the facts, the motives and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 96], the Committee once again expresses its firm expectation that the perpetrators in the mentioned cases will be*

brought to trial and convicted without further delay. The Committee trusts that the Government will continue to make every effort in this regard and urges the Government to keep it informed of any progress made.

524. Concerning the additional allegations communicated by the ITF, the UMA and the NFSW-FGT, the Committee observes that the complainants denounce a policy of trade union repression and criminalization, especially in the agricultural sector, including through the implementation of Memorandum No. 32, which has resulted in practice in serious violations of human and trade union rights. In particular, the Committee observes that the complainants denounce 18 cases of extra-judicial killings of trade union members and leaders since 2016, namely Leonardo Escala, Ariel Diaz, Alexander Ceballos, Flora Gemola, Ronald Manlanat, Julius Broce Barellano, Eglicerio Villegas, Angelife E. Arsenal, Paterno M. Baron, Rene P. Laurencio Sr., Morena F. Mendoza, Marcelina D. Dumaguit, Rannel H. Bantigue, Jomarie S. Ugahayon Jr., Marchel Sumicad, Felipe Dacal-Dacal, Jose Jerry Catalogo and Antonio "Cano" Arellano, and allege that investigations into the incidents did not always yield results. The Committee further notes that the complainants' allegations also concern illegal arrests, detention and false criminal charges against more than 100 workers, human rights activists and unionists, including from the NFSW-FGT and UMA-affiliated unions, as well as numerous incidents of intimidation, harassment, red-tagging and threats against trade union members and leaders. According to the complainants, the Government fails to provide adequate protection against these crimes, most of which were characterized by some degree of involvement of State agents, in particular members of the police, the armed forces or other organizations under their control. Observing that the Government has not yet provided its observations in this regard, the Committee must express deep concern at the gravity of the allegations made, as well as at their repeated and prolonged nature, resulting in a climate of violence and impunity with an extremely damaging effect on the legitimate exercise of trade union rights in the country. In these circumstances, the Committee must recall that acts of intimidation and physical violence against trade unionists constitute a grave violation of the principles of freedom of association and the failure to protect against such acts amounts to a *de facto* impunity, which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights. Blanket linkages of trade unions to an insurgency have a stigmatizing effect and often place union leaders and members in a situation of extreme insecurity. It is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators [see **Compilation**, paras 90, 93 and 102]. Considering that a large number of the incidents are alleged to have been committed by or with the involvement of State agents, in particular the police, the armed forces or organizations under their control, the Committee also recalls that investigations should focus not only on the individual author of the crime but also on the intellectual instigators in order for true justice to prevail and to meaningfully prevent any future violence against trade unionists. It is crucial that the responsibility in the chain of command also be duly determined when crimes are committed by military personnel or the police so that the appropriate instructions can be given at all levels and those with control held responsible in order to effectively prevent the recurrence of such acts [see **Compilation**, para. 99].
525. In line with the above, the Committee urges the Government to provide a detailed reply to the serious allegations of extra-judicial killings, illegal arrests, detention, threats, intimidation, harassment and red-tagging of trade unionists communicated by the ITF, the UMA and the NFSW-FGT and expects the Government to ensure that all of the above allegations will be

*rapidly investigated and perpetrators of violence against trade unionists identified and brought to justice, irrespective of whether they are private persons or State agents, so as to combat impunity and prevent the repetition of such acts. The Committee trusts that the Government will prioritize investigations into these serious incidents and requests it to keep it informed of the progress made in this regard, including the status of any cases initiated. The Committee also urges the Government to ensure the immediate release of any detained trade unionists, should their arrest or detention be connected to the legitimate exercise of their trade union rights.*

- 526.** *Finally, with regard to the climate of violence and insecurity alleged in this case, the Committee must recall that all allegations of violence against workers who are organizing or otherwise defending workers' interests should be thoroughly investigated and full consideration should be given to any possible direct or indirect relation that the violent act may have with trade union activity [see **Compilation**, para. 101]. Emphasizing that the responsibility in this regard rests with the Government, the Committee expects the Government to do everything in its power to ensure that any past or future allegations of labour-related killings and other forms of violence against trade unionists are rapidly and properly investigated, so as to clarify the circumstances of the incidents, including the presence of any direct or indirect relation to trade union activity, determine responsibilities and punish the perpetrators with a view to preventing the repetition of such acts. The Committee also urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all State officials and operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.*
- 527.** *The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.*

## The Committee's recommendations

- 528.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a)** **Recalling that the murders of Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013 and that the Government has indicated that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution, the Committee once again expresses its firm expectation that the perpetrators in the mentioned cases will be brought to trial and convicted without further delay. The Committee trusts that the Government will continue to make every effort in this regard and urges the Government to keep it informed of any progress made.**
  - (b)** **The Committee urges the Government to provide a detailed reply to the serious allegations of extra-judicial killings, illegal arrests, detention, threats, intimidation, harassment and red-tagging of trade unionists communicated by the ITF, the UMA and the NFSW-FGT and expects the Government to ensure that all of the above allegations will be rapidly investigated and perpetrators of violence against trade unionists identified and brought to justice, irrespective of whether they are private persons or State agents, so as to combat impunity and prevent the repetition of such acts. The Committee**

trusts that the Government will prioritize investigations into these serious incidents and requests it to keep it informed of the progress made in this regard, including the status of any cases initiated.

- (c) The Committee urges the Government to ensure the immediate release of any detained trade unionists, should their arrest or detention be connected to the legitimate exercise of their trade union rights.
- (d) Finally, emphasizing the Government's responsibility with regard to investigations into allegations of violence against workers who are organizing or otherwise defending workers' interests, the Committee expects the Government to do everything in its power to ensure that any past or future allegations of labour-related killings and other forms of violence against trade unionists are rapidly and properly investigated, so as to clarify the circumstances of the incidents, including the presence of any direct or indirect relation to trade union activity, determine responsibilities and punish the perpetrators with a view to preventing the repetition of such acts. The Committee also urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all State officials and operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.
- (e) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

Case No. 3313

Report in which the Committee requests to be kept informed of developments

**Complaint against the Government of the Russian Federation presented by the Confederation of Labour of Russia (KTR) supported by**  
– the International Trade Union Confederation (ITUC) and  
– IndustriALL Global Union

**Allegations: The complainant alleges that the restrictive interpretation by the courts of the requirements of the Law on Trade Unions create obstacles to the free establishment and functioning of trade unions and that the application to trade unions of the legislative provisions regulating non-commercial organizations performing the functions of foreign agents further impedes the exercise of their rights**

- 529.** The complaint is contained in communications from the Confederation of Labour of Russia (KTR) dated 26 January and 21 August 2018, 4 July 2019 and 18 November 2020. In communications dated respectively 29 January and 4 April 2018, the International Trade Union Confederation (ITUC) and IndustriALL Global Union associated themselves with the complaint.
- 530.** The Government sent its observations in communications dated 20 August 2018 and 26 February 2021.
- 531.** The Russian Federation has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

## **A. The complainant's allegations**

- 532.** In its communications dated 26 January and 21 August 2018, the KTR indicates that its complaint relates to the Saint Petersburg City Court judgment of 10 January 2018 to dissolve the Inter-regional Trade Union "Workers' Association" (MPRA), a member of the KTR. By way of background, the KTR explains that the MPRA was established in 2006 by employees of the Ford Motor Company plant in Vsevolozhsk and of the AvtoVAZ plant in Tolyatti as the Inter-regional Union of Automotive Industry. It was registered by the Saint Petersburg central department of the Ministry of Justice on 1 February 2007. In January 2014, the MPRA was restructured and opened its membership to workers outside the automotive industry. As from 21 January 2014, the union operates under its current name. Since its establishment, the trade union's mission has been to represent



and protect social and labour rights and interests of its members and to promote solidarity by working with the Russian and international trade union movement to ensure the social and economic advancement of all workers.

- 533.** The complainant indicates that on 28 June 2017, following a complaint by a natural person, the Deputy Prosecutor of Saint Petersburg's Krasnogvardeisky district decided to conduct an unscheduled audit of the MPRA to verify the trade union's compliance with its legal obligations as a non-commercial organization and to that effect issued an order to the MPRA Chairperson, Mr Alexei Etmanov, to report to the Prosecutor's office and to provide a file of documents for inspection. The following documents were requested: the MPRA statutes as amended; decisions of its governing bodies; results of audits carried out between 2012 and 2017; the union's internal regulations; a list of activities conducted by the MPRA between 2012 and 2017; samples of printed and audio-visual materials published by the MPRA; information about the sources of the MPRA's funding and other assets; original accounting records from 2012 to 2017; cash flow statements; information on the MPRA's structural divisions and their leaders and documents pertaining to their governing bodies; a list of the MPRA members and applications for membership and resignation; documentary evidence of the MPRA's use of internet resources; and various other documents. Mr Etmanov reported to the Prosecutor's office within the period specified but presented only the MPRA statutes; registration documents; records of meetings of its congress; a copy of a lease; as well as internal regulations relating to the procedure for collecting membership fees, the Audit Commission and the provision of legal services. He refused to present any of the other requested documents, referring to the legislative provisions regulating the activities of trade unions and to international principles on freedom of association.
- 534.** On 21 July 2017, the Deputy Prosecutor ordered that administrative proceedings should be brought against Mr Etmanov pursuant to article 17.7 of the Code of Administrative Offences (deliberate failure to satisfy prosecutor's legitimate demands). The order was sent to a justice of the peace of judicial district No. 83 in Saint Petersburg. Consequently, the Deputy Prosecutor suspended the audit of the MPRA on 24 July 2017. On 13 December 2017, a judge of a district court in Saint Petersburg dismissed the case brought against Mr Etmanov due to the expiry of the statute of limitations. On 23 April 2018, however, a justice of the peace of Saint Petersburg court district No. 83 recognized the refusal to provide the documents relating to the financial and economic activities of the MPRA in 2013 as unlawful and fined Mr Etmanov 2,000 Russian rubles. The complainant subsequently forwarded a decision dated 16 August 2018 taken by a judge of a Saint Petersburg district court confirming the magistrate's decision.
- 535.** On 1 December 2017, the assistant Prosecutor sent to the district Prosecutor a report containing proposals to resume the audit and to draft a petition to dissolve the MPRA to be forwarded to the Saint Petersburg Prosecutor's office and the Saint Petersburg City Court. Accordingly, on the same day, the MPRA was informed that the audit was resumed and that the Saint Petersburg Prosecutor's office had petitioned the Saint Petersburg City Court to dissolve the MPRA in the interests of the general public.
- 536.** The KTR indicates that the Prosecutor's arguments as set out in the petition can be split into three categories. Firstly, the MPRA committed a number of legislative violations when registering its statutes and amendments thereto: (i) the MPRA statutes do not specify the legal entity's legal form (rather than specifying its legal status as "public organization", they simply refer to the type of legal entity – "trade union"); (ii) the trade union's official address listed in its statutes is incorrect (the statutes list the address of the elected Board, whereas the consolidated State register of legal entities lists that of

the executive body); (iii) the statutes do not specify what categories of individuals or professional groups are eligible for trade union membership (because of the intersectoral nature of the MPRA's activities, the statutes contain the wording "the trade union may comprise blue-collar workers, engineers and persons of other trades"); (iv) the statutes do not strictly define the geographic area in which MPRA operates (they list the constituent entities of the Russian Federation in which MPRA's primary trade union organizations operate but state that the list is not exhaustive and may be amended upon a decision of the MPRA board to include new primary trade union organizations); and (v) the current version of the statutes states that the document was amended in March 2015, whereas the statutes were amended in April 2015.

- 537.** Secondly, according to the Prosecutor, the MPRA has repeatedly conducted activities contrary to its statutory objectives, namely activities not aimed at representing or protecting the social and labour rights and interests of its members. The Prosecutor referred, in particular, to the publication on the MPRA website of a news story and an opinion piece, as well as to the organization by MPRA activists, on 30 November 2014, of a rally in support of a national campaign organized by the KTR for affordable medicine and a subsequent publication of a related news story on the MPRA website.
- 538.** Thirdly, according to the Prosecutor, the following MPRA activities can be compared to those of a non-commercial organization performing the functions of a foreign agent, without it being registered as such: (i) political activities in the form of posts on the MPRA social network group containing information on a campaign to amend article 134 of the Labour Code to ensure the regular indexing of wages to inflation as required by law and a link to the corresponding public petition; and (ii) receipt of foreign funding through transfer by IndustriALL Global Union (of which the MPRA is a member) of 175,000 rubles in 2015 and 188,350 rubles in 2016 to MPRA's operating account for the purposes of conducting trade union training activities.
- 539.** According to the KTR, in court, the representatives of the Saint Petersburg Prosecutor's office maintained that the above-mentioned violations were serious and irremediable and therefore provided grounds for the dissolution of the trade union.
- 540.** The KTR indicates that on 10 January 2018, the Saint Petersburg City Court ruled that it would grant the petition to dissolve the MPRA (a copy of the ruling provided). The court considered that the MPRA statutes did not specify what categories of individuals or professional groups were eligible for its membership and referred in this respect to paragraph 3.1 of the MPRA statutes, which states that, "anyone who has reached the age of 14, is engaged in a trade or profession, is temporarily not working, or retired, or is studying in a secondary or higher educational establishment may join the trade union"; and that "the trade union may comprise blue-collar workers, engineers and persons of other trades". The KTR indicates that according to the court: "This violation can be classified as serious and irremediable. Furthermore, it cannot be remedied through a statutory amendment, since it concerns ... a public association which, by admitting not only persons of various trades but also persons without a trade, including those temporarily not working – that is to say, persons not united by virtue of their professional activities by a common industrial or professional interest to represent and protect their social and labour rights and interests – is not in fact a trade union". According to the KTR, the court thus considered that the following categories of persons are ineligible for trade union membership: those currently not working, retirees, students, and workers of various trades and professions.
- 541.** The KTR indicates that the court further observed that the MPRA's statutes provided for the address of its collegial governing body, whereas, according to the court, the address

of the union's permanent executive body should have been indicated. The court did not consider this violation to be serious or irreparable. Furthermore, the court observed that the MPRA's statutes did not define the geographic area in which the trade union operated. The court considered that an open list of constituent entities of the Russian Federation in which the trade union operated constituted a violation of the legislation. The court did not consider this violation to be serious or irreparable. In the opinion of the court, in order for the trade union to affiliate a primary trade union from an entity of the Russian Federation not listed in the statutes it must first amend its statutes. The court also noted that the MPRA provided inaccurate information when registering amendments to its statutes. The court considered that a clerical error whereby the text of the new version of the MPRA statutes stated that the statutory amendments had been made in March 2015, when in fact they had been made in April 2015, could be classified as a violation, albeit not serious or irreparable.

- 542.** Finally, the court considered that the MPRA had violated the legislation by failing to apply for inclusion in the register of non-commercial organizations performing the functions of a foreign agent, having received foreign funding and having been engaged in political activities. The court considered that some publications posted on the MPRA website and social media outlets were political in nature and fell outside the scope of the MPRA's statutory activities as they were not aimed at protecting workers' social or labour rights. The complainant indicates that the fact that IndustriALL Global Union has transferred funds to the MPRA for the training of trade union members and the fact that the MPRA had subsequently used those funds for their specified purpose provided the court with sufficient evidence that the MPRA had performed the functions of a foreign agent by receiving foreign funding. Accordingly, the court decided the MPRA had received monetary funds from an international trade union on the basis of special-purpose funding agreements dated 24 July 2015 and had subsequently spent those funds. The KTR points out that according to the court, the legislative provisions regulating the legal status of non-commercial organizations performing functions of a foreign agent are applicable to trade unions, as section 1, paragraphs 5, 6 and 7 of the Law on Non-Commercial Organizations contains an exhaustive list of exceptions to the scope of its application. The court pointed out that the Law on Trade Unions and Convention No. 87 regulate only the rights of trade unions, including the right to freedom of association and that the rights of trade unions are not absolute and may be restricted for the purposes of protecting the constitutional framework, public morals and health, the rights and legitimate interests of others, national defence and national security. Referring to the position of the Constitutional Court set forth in its Decision No. 10 of 14 April 2014, the court stated that the provisions on foreign agents are aimed at protecting public interests (ensuring that all interested parties are informed about the involvement of foreign entities in the monetary or material support of any non-commercial organization engaged in political activities), and therefore serve as a legitimate basis for the restriction of freedom of association and can be applied to trade unions. The court did not (sic) consider this violation to be serious or irreparable. The Saint Petersburg City Court concluded that trade unions have a right to engage in political activities in the socio-economic sphere; however, if a trade union exercises that right while at the same time receiving monetary funds from a foreign entity, it must register as a non-commercial organization performing the functions of a foreign agent.
- 543.** The KTR indicates that while the court accepted the position of the MPRA on two points, it did not affect the outcome of the case. While the Prosecutor's office maintained that trade unions registered as legal entities were required to specify in their name – or at least in the text of their statutes – their legal form as “public organization”, the court

concluded that according to the legislation in force, trade unions were not required to do so and must simply specify the type of legal entity as “trade union”. Moreover, while the Prosecutor’s office argued that the MPRA activities in support of amendments to article 134 of the Labour Code regulating the indexing of wage were political and were not covered by its statutes, the court stated that the MPRA activities aimed at developing legislation in the socio-economic sphere (including its support of the amendments to article 134 of the Labour Code) were legal and consistent with the trade union’s statutory goals.

- 544.** The KTR alleges that companies at which MPRA primary trade union organizations operated immediately began implementing the court judgment despite the fact that it had not officially entered into force. For example, the functions of the Chairperson of the Ford Motor Company workers’ committee of the MPRA’s primary trade union organization in Saint Petersburg and Leningrad Province were restricted. The complainant explains that as per the requirements of article 373 of the Labour Code, the employer was obliged to obtain consent from the MPRA before dismissing the Chairperson. On 17 May 2017, the MPRA refused to grant such consent. On 25 May 2017, the company appealed to the Krasnogvardeisky District Court in Saint Petersburg to declare that such refusal to consent to the dismissal of a member of a primary trade union organization was unreasonable. On 22 January 2018 the case was reviewed in court. The decision of the Saint Petersburg City Court to dissolve the MPRA was used by the company representatives as evidence that MPRA’s refusal to consent to the above-mentioned dismissal was unreasonable, even though that decision had not officially entered into force.
- 545.** The KTR informs that on 22 May 2018, the administrative law judges of the Supreme Court issued an appeal ruling on the complaint filed by the MPRA, annulling the 10 January 2018 decision of the Saint Petersburg City Court (a copy of the ruling provided). The Supreme Court considered that there were no grounds to dissolve the MPRA as the violations of the laws that had occurred were not gross or irreparable.
- 546.** The KTR considers nevertheless that the conclusions of the Supreme Court recognizing a number of the provisions of the MPRA statutes to be in violation of the legislation in force create obstacles not only for the MPRA’s work but also to the free establishment of trade unions and their activities in the country. The KTR indicates in this respect that the Supreme Court considered that paragraph 3.1 of the MPRA’s statutes, which opens trade union membership to those temporarily not working, pensioners, students and workers in different specialized professions, contravenes the Law on Trade Unions of 12 January 1996. Thus, in the complainant’s view, the Supreme Court interprets the provisions of the Law on Trade Union as restricting the right of the trade union to define independently the categories of persons that may obtain trade union membership.
- 547.** Furthermore, the KTR indicates that the Supreme Court and the Saint Petersburg City Court considered that the statutes of the trade union which has interregional status may not specify an open list of geographical subjects, on the territory of which a trade union conducts its activities, and must list all of the subjects of the Russian Federation where a trade union organization exists. According to the KTR, such an approach would mean that where a trade union organization is created in another subject of the Russian Federation, amendments to the statutes are required, thereby creating additional complications for the trade union in broadening its membership.
- 548.** The KTR indicates that the Supreme Court further considered the publication on the MPRA website of two articles and agreed with the conclusions of the Saint Petersburg City Court that the said publications contravened the union statutes.

- 549.** The KTR further points out that the Supreme Court and the Saint Petersburg City Court considered that article 2(6) of the Law on Non-Commercial Organizations of 12 January 1996 applied to trade unions. The MPRA considers that the rule on non-commercial organizations acting as foreign agents contained in that Law should not apply to trade unions and points out that employers' organizations are exempted therefrom and stresses in this respect that equal requirements should be applied to both trade unions and employers' associations. The KTR indicates that the Supreme Court did not concur with the argument of the MPRA in this regard and considered that the status of a foreign agent did not create obstacles to trade unions' international cooperation and the conduct of political activities. At the same time, the Supreme Court did not concur with the Saint Petersburg City Court concerning the fact that the failure of the MPRA to apply for entry in the register of non-commercial organizations acting as foreign agents constituted a gross violation and should lead to the MPRA being dissolved.
- 550.** The Supreme Court annulled the decision to dissolve the MPRA simply because it did not consider all of the above-mentioned grounds to be gross and irreparable violations, as required for a dissolution decision to be taken.
- 551.** The KTR alleges that as a result, the Supreme Court confirmed the obligation imposed on trade unions to apply for the status of a foreign agent in cases where the trade union receives funds from foreign sources. The KTR provides examples of such cases of the receipt of financial resources, which can emanate from its members who are foreign citizens, or those who work abroad, from other trade unions, including international trade unions, and from employers that are foreign legal persons. The KTR considers that the establishment of different rules for workers' and employers' organizations creates unequal conditions for the conduct of their respective activities.
- 552.** The KTR indicates that it has raised this issue in the Russian Tripartite Commission for the regulation of social and labour issues (RTK) and proposed to consider excluding trade unions and their associations from the scope of application of the rules on non-commercial organizations acting as a foreign agent (i.e. amending article 1(7) of the Law on Non-Commercial Organizations). On 22 March 2018, this issue was examined at the meeting of an RTK working group. As a result of the meeting, it was proposed that the Ministry of Labour will enhance the activities of the working group (set up by Order No. 676 of the Ministry of Labour of 18 November 2013 to analyse the recommendations of the ILO Governing Body (Cases Nos 2758, 2216 and 2251) and to develop proposals to consolidate the current rules and regulations and law-enforcement procedures), hold a meeting of the working group by 15 May 2018 and report on the results to the RTK secretariat. The KTR alleges that while the first meeting of RTK took place on 12 May 2018, to date no measures have been taken by the Ministry of Labour to amend the legislative provisions governing the application to trade unions of the status of an organization acting as a foreign agent.
- 553.** By its communication dated 4 July 2019, the KTR, referring to a negotiation process with the Government on the issues raised in the complaint, requested to postpone the consideration of this case.
- 554.** By a communication dated 18 November 2020, the KTR requested to resume the examination of the case in view of the absence of any action from the authorities with regard to the issues raised in this complaint and, in particular, as concerns the status of foreign agents for which trade unions must apply should they receive foreign funds. The KTR reiterates, in particular, that any trade union that has received foreign funding (for example, membership fees from foreign workers, material assistance from an international trade union association, funds from an employer who is a foreign company,



etc.) can be recognized as an organization performing functions of a foreign agent if the regulatory authorities consider that the activities of the trade union are to some extent political in nature. The KTR alleges that the recognition of a trade union as an organization performing the functions of a foreign agent will entail for the trade union not only the need to indicate in all information materials that the trade union has such a status but also the following other consequences: inclusion of the trade union in the public register as an organization performing the functions of a foreign agent; quarterly submission by the trade union to the supervisory authorities of reports regarding the purposes on which funds received from foreign sources have been spent; submission, every six months, of reports on the activities and composition of the governing bodies of the trade union; and mandatory annual financial trade union audit to be submitted to the authorities. The KTR also points out that the term “foreign agent” is perceived by the majority of the Russian population as the same as the term “foreign spy”.

- 555.** The KTR also alleges that a violation of the legislation, in particular, untimely registration of a non-profit organization as an organization performing the functions of a foreign agent, may entail, pursuant to section 19.34 of the Code of Administrative Offenses the imposition of an administrative fine on the organization in the amount of up to 500,000 rubles (about €5,500), as well as the imposition of a fine on the head of the organization in the amount of up to 300,000 rubles (about €3,300). According to the KTR, such legislative regulation can lead to unjustified interference of state bodies in the internal affairs of trade unions. The complainant points out that, pursuant to paragraph 7 of section 1 of the Law on Non-Commercial Organizations, employers’ associations continue to be excluded from the obligation to be registered as organizations performing the functions of a foreign agent, which means that the state has created unequal conditions for trade unions and employers’ associations activities.
- 556.** The KTR further indicates that the Government has submitted to the State Duma Draft Law No. 1052523-7, which provides for the following additional obligations to be imposed on organizations recognized as foreign agents: obligation to report on ongoing programmes and provisions of other documents that are the basis for holding events. The Law would also provide additional grounds for the liquidation of a non-profit organization performing the functions of a foreign agent.
- 557.** In addition, the KTR expresses its concern that the Prosecutor’s office may again conduct an audit of the MPRA, including on the issue of compliance with the legislation on organizations performing the functions of a foreign agent. These concerns are based on a series of publications that recently appeared on the internet containing negative information and defamatory assessments of the MPRA’s activities. The KTR refers, in particular, to a publication by the Russian news agency, “Federal News Agency”, in November 2020 providing information on the Prosecutor’s investigation of the MPRA, as a result of which a decision was made in 2018 to liquidate the MPRA. At the same time, a negative assessment of the decision of the Supreme Court, which annulled the decision of the lower court to liquidate the MPRA, was given as it allowed the MPRA to continue its activities. The publication also mentions that in 2009, several trade union flyers of the MPRA were recognized as extremist materials, and that some of the public organizations supporting the MPRA were liquidated in court. The KTR and the MPRA believe that the reports in the media may be followed by another investigation.

## B. The Government’s reply

- 558.** In its communications dated 20 August 2018 and 26 February 2021, the Government provides the following information. Regarding the dissolution of the MPRA ordered by



the Saint Petersburg City Court, the Government refers to the grounds stated in the decision for the dissolution: the trade union statutes did not comply with legislative requirements, the trade union carried out activities contravening its statutes, in particular political activities, and also conducted itself as a foreign agent without informing the competent authority. This decision was appealed and examined by the Supreme Court. The Supreme Court established that the statutes did not contain any indication of a specific type of activity, or industrial or professional interests, uniting the members of the trade union and expressed the opinion that non-compliance of the provisions of the trade union statutes with the legislation may not be considered a gross or irreparable violation, the said provisions having been permitted when the trade union was registered.

- 559.** The Government explains that as the law does not establish a list of gross violations, it is for the court to assess whether a violation of the law committed by a citizens' association is a gross violation and leads to the association being dissolved or its activities being prohibited. Gross violations by citizens' associations of the Constitution, federal constitutional laws, federal laws or other laws and regulations may include acts aimed at denying the fundamental democratic principles, rights or freedoms recognized by the Constitution, the generally recognized principles and standards of international law, international agreements of the Russian Federation, federal laws and other laws and regulations, or at promoting war or inciting national, racial or religious hatred, and provoking discrimination, hostility or violence. A violation which creates a real threat or causes harm to the life or health of citizens, the environment, public order and safety, property, the lawful economic interests of natural and/or legal persons, society and the State also constitutes a gross violation. Gross violations are those, which cannot be lawfully remedied, for example a situation where a decision cannot be taken in accordance with the procedure established by founding documents.
- 560.** The Government indicates that the Supreme Court acknowledged the ruling of the court of the first instance as being correct concerning the non-compliance of certain provisions of the statutes with the legislation in force, but considered the decision that this constituted gross and irreparable violations to be erroneous.
- 561.** As to the fact that the trade union acted as a foreign agent following receipt of money from a foreign source – IndustriALL Global Union (Switzerland) – the Supreme Court based its decision on the fact that the failure of a non-commercial organization to register as foreign agent cannot be considered a gross violation leading to the organization being dissolved, as the non-compliance with the obligation in question does not in itself create a real threat to public order or safety.
- 562.** As regards activities contravening the trade union statutes, the court noted that according to the MPRA's statutes, the aims of its activities are the protection of the social and labour rights and interests of its members. One of the grounds for dissolution was the publication on the MPRA's website of three articles containing criticism of the actions of the authorities to institute a "PLATO" system, and also a petition in support of the campaign to amend article 134 of the Labour Code. The Supreme Court noted that, in accordance with the legislation in force, trade unions have the right to make proposals concerning the adoption of laws and regulations on social and labour issues.
- 563.** With regard to the status of a foreign agent for which trade unions must apply in certain circumstances, the Government refers at the outset to the ease with which a trade union may be founded in the Russian Federation; the guarantees of independence, unaccountability and uncontrollability afforded to them; and the wide-reaching authority of trade unions. It indicates, in particular, that a trade union may be founded by three

founders and that there is no requirement for state registration, although a trade union may choose to register through the procedure of notification. The Government indicates that there are numerous rights and guarantees afforded to trade unions, including: independence from, unaccountability to and uncontrollability by, state bodies and employers; protection against wrongful dismissal at the employer's initiative afforded to trade union members and leaders; an obligation on employers to create conditions for the activities of an elected body of a primary trade union organization, including the provision of appropriate premises, office equipment, means of communication, etc.; the priority right to represent workers' interests in social partnerships at the local level (at the level of individual employers); the exclusive right to represent workers' interests at higher levels (regional, sectoral, etc.), including through the RTK, which is involved in the elaboration of legislation; the right to monitor compliance with labour legislation and other laws and regulations containing labour law norms as well as with collective agreements in force; guarantees for the activities of trade union labour inspectors; and the right to strike (article 409 of the Labour Code).

- 564.** The Government explains that the concept of a foreign agent is set out in article 2(6) of the Federal Law of 12 January 1996 on Non-Commercial Organizations. To be considered as a foreign agent, a non-commercial organization must receive monetary funds and other assets from foreign states, foreign state bodies, international and foreign organizations, foreign individuals, stateless persons, or persons acting on behalf of those persons or entities, and/or from Russian legal entities receiving monetary funds or other assets from the aforementioned sources. It must simultaneously be engaged in political activity on the territory of the Russian Federation. The legislation also sets out the following criteria for identifying a non-commercial organization's activity as political: activity in the area of state formation, the protection of the constitutional order and federal structure, the protection of the sovereignty and territorial integrity of the Russian Federation, the preservation of the rule of law, public order and state and public security, national defence, foreign policy, the socio-economic and national development of the Russian Federation, the development of the political system, the activities of state and local authorities, or the legislative regulation of human and civil rights and freedoms with the intention of influencing the development and implementation of public policy or the establishment, decisions or activities of state and local authorities.
- 565.** According to the Government, the Law on Non-Commercial Organizations identifies the following as forms of engagement in political activity:
- participating in the organization and holding of public events in the form of assemblies, rallies, demonstrations, marches or pickets or various combinations thereof, or public debates, discussions or presentations;
  - publicly dealing with state or local authorities or their officials, and any other acts that may influence the activities of those authorities, including amendments to or the adoption or repeal of an act or other law or regulation;
  - publicizing, including through modern information technology, opinions on state authorities' decisions or policies;
  - involving members of the public, including minors, in such activities;
  - financing such activities.
- 566.** The Government points out that trade unions have the right to engage in all of the above-mentioned forms of political activities in accordance with the Law on Trade Unions. Trade unions are the largest non-profit organizations in the country and count over 21 million

people among their ranks (the population totals 146.7 million, of which 70.4 million are employed). The trade union side of the RTK includes representatives of the KTR. Trade unions in the Russian Federation are thus fully involved in political activities.

- 567.** With regard to the KTR allegation of unequal conditions created for the activities of trade unions and employers' associations, as the latter are excluded from the legislation regulating activities of non-commercial organizations performing functions of a foreign agent, the Government indicates that equality of the parties is defined as one of the fundamental principles of social partnership under article 24 of the Labour Code. The Law on Trade Unions and the Law on Employers' Associations of 27 November 2002 impose almost identical norms for both social partners. However, trade unions, which are based on the membership of individuals, are community organizations, whereas employers' associations are not. Thus, in comparison with employers' associations, trade unions have additional rights to organize and hold public events in the form of assemblies, rallies, demonstrations, marches or pickets or various combinations thereof. The organization and holding of the above-mentioned events are among the most effective forms of political activity that trade unions, including the KTR, can perform. The potential for foreign financing of trade unions, which are the largest community organizations in the country, hold wide-reaching authority and play a real part in national political life, including through mass events, leads to the natural decision of imposing certain limitations on trade unions' uncontrollability by and unaccountability to the state authorities. Moreover, trade union members and the public are fully entitled to know about foreign financing of community organizations that play a key role in civil society.
- 568.** With regard to the KTR allegation that any trade union receiving membership fees from foreign sources, material support from an international trade union association, or funds from an employer that is a foreign enterprise may be recognized as a foreign agent, the Government indicates that trade unions have the legal right to define their own activities independently. This includes defining their sources of financing and how to spend their income. Trade unions define their own joining and membership fees. Moreover, the Ministry of Labour has no information on any mass membership of foreign nationals in Russian trade unions. The transfer of funds from an employer to a trade union referred to by the KTR assumes that an employer may allocate funds to a primary trade union organization for cultural and physical education and health activities in instances stipulated by the collective agreement; and that the wages of the primary trade union organization's elected body leader are paid for by the employer in amounts established under the collective agreement. The Government points out that such sources of funding are not legislatively imposed; while possible they are not obligatory. On the issue of the material support of trade unions by international trade union associations, it must be noted that trade unions have the right to independently define whether they receive this kind of support and, if so, the legal mechanisms through which they receive it.
- 569.** Regarding the KTR's allegation that the term "foreign agent" is understood by the majority of the Russian population to be synonymous with "foreign spy", the Government indicates that it is not engaged in fostering an association between the terms "foreign agent" and "foreign spy" in the public consciousness. The term "foreign agent" has been used for decades in the legislation of countries presented as archetypes of democratic societies. It must also be noted that the Constitutional Court in its resolution No. 10-P of 8 April 2014 stated that the institution of non-profit organizations performing the functions of a foreign agent does not necessarily mean that all non-commercial organizations are unfavourably regarded by the Government, nor is it designed to foster a negative attitude to political activities undertaken by non-commercial organizations,

and, as a result, it cannot be interpreted as an expression of distrust or a wish to discredit non-commercial organizations or their goals.

- 570.** Regarding the KTR's allegation that the MPRA is at risk of being investigated by the Prosecutor's office following a series of online publications about it in the Federal News Agency, the Government indicates that the Federal News Agency is not the official information channel of the Prosecutor's Office, the Government, or any other state body. It is therefore not possible to comment on its publications.
- 571.** In the light of the above, the Government considers that the KTR's complaint is unfounded.

## C. The Committee's conclusions

- 572.** *The Committee notes that the allegations in this case emanate from the 10 January 2018 decision of the Saint Petersburg City Court to liquidate the MPRA, the complainant's affiliate. The Committee notes that the court ordered the dissolution of the union as it concluded there was a violation of the provisions of the Law on Trade Unions, the Law on Non-Commercial Organizations and the MPRA's statutes. As concerns the violation of the Law on Trade Unions, the Committee notes the court's reasoning:*

*According to section 2, paragraph 1, of the Law on Trade Unions, a trade union is a voluntary public association of citizens united by virtue of their professional activities by common industrial or professional interests, created for the purposes of representing and protecting its members' social and labour rights and interests. ...*

*The trade union's statutes should include: the trade union's official name, aims and objectives; the categories of individuals or professional groups eligible for membership; the territory within which the trade union operates; and the address of the trade union body (section 7, paragraph 2).*

*Contrary to the requirements of section 2, paragraph 1, and section 7, paragraph 2, of the Law on Trade Unions, the statutes of the MPRA do not specify the categories of individuals or professional groups eligible for membership.*

*On the contrary, paragraph 3.1 [of the statutes] states that anyone who has reached the age of 14, is engaged in a trade or profession, is temporarily unemployed or retired or is studying at a secondary or higher educational establishment may join the trade union; the trade union may comprise blue-collar workers, engineers and persons of other trades. Therefore, since the list is not restrictive, it cannot be said to define the specific categories of individuals or professional groups eligible for membership of the trade union. ...*

*This violation can be classified as serious and irremediable. Furthermore, it cannot be remedied through a statutory amendment, since it concerns the organization by the respondent of a public association which, by admitting not only persons of various trades but also persons without a trade, including those not currently engaged in work – that is to say, persons not united by virtue of their professional activities by a common industrial or professional interest to represent and protect their social and labour rights and interests – is not in fact a trade union. ...*

*As indicated above, the trade union's statutes must specify the address of the trade union body [... which] is the trade union's permanent executive body. ... It should be noted that the statutes of the MPRA provide for the establishment of the following trade union bodies in addition to the Chairperson and the Executive Committee: a Congress, a Board and an Audit Commission, each of which, given the territory in which the trade union operates, may exercise their powers in any of the 42 constituent entities of the Russian Federation. An indication of the location of such bodies does not provide reliable information about the location of the trade union. [... paragraph 1.7 of the statutes refers to the areas the trade union operates]. It also states that the above-mentioned list is not exhaustive and may be*

*amended upon the decision of the Board to admit new primary trade union organizations to the trade union.*

*Based on the fact that the trade union may operate not only in the listed areas but also in other constituent entities of the Russian Federation, it can be concluded that the statutes do not define the territory in which the trade union operates. ...*

*Consequently, the MPRA has violated the requirements under the Law on Trade Unions relating to the content of trade union statutes, in particular the requirement to specify the territory within which the trade union operates and the address of the trade union body.*

**573.** *The Committee notes that section 2, paragraph 6 of the Law on Non-Commercial Organizations, the question of application of which to trade union organizations is the central issue of the present complaint, and which the court of first instance examined in its judgment, reads as follow:*

*A non-commercial organization performing the functions of a foreign agent is understood to mean a Russian non-commercial organization that receives monetary funding and other property from foreign States or State authorities, international or foreign organizations, foreign citizens, stateless persons or persons authorized by them and/or Russian legal entities that receive monetary funding and other property from the above-mentioned sources ... and that participates in political activities within the Russian Federation, including in the interests of those foreign sources.*

*A non-commercial organization (with the exception of political parties) is understood to mean a non-commercial organization participating in activities within the Russian Federation if, regardless of its statutory goals and objectives, it operates in the area of: state-building; protecting the constitutional framework and federal structure of the Russian Federation; protecting the sovereignty and ensuring the territorial integrity of the Russian Federation; ensuring law and order, State and public security, national defence, foreign policy and the socio-economic and national development of the Russian Federation, shaping the political system and the activities of State and local authorities; or regulating human and civil rights and freedoms in order to influence the design and implementation of State policy, the establishment of State and local authorities or the decisions and actions of those authorities.*

*Such activities may take the following forms:*

*participating in the organization and holding of public events in the form of meetings, rallies, demonstrations, marches, pickets or various combinations of the above, or in the organization and holding of public debates, discussions or presentations;*

*participating in activities aimed at producing a specific outcome during an election or referendum, in the monitoring of an election or referendum, in the establishment of election or referendum committees or in the activities of political parties;*

*issuing public appeals to State bodies, local authorities and their appointed officials, and other activities that influence the activities of such bodies, including those aimed at the adoption, amendment or abolition of laws and other legislative instruments;*

*disseminating opinions on the decisions or policies of State bodies, including with the use of modern information technology;*

*shaping socio-political views and beliefs, including by conducting public opinion polls and publishing their results or by conducting other sociological studies;*

*involving other citizens, including minors, in the above-mentioned activities;*

*financing the above-mentioned activities.*

*Political activities do not include activities carried out in the fields of science, culture, art, health care, disease prevention and the protection of public health, social services, social assistance and protection, maternal and child welfare, social support for persons with*



*disabilities, the promotion of healthy lifestyles, fitness and sport, the protection of plant and animal life and charitable activities.*

- 574.** *The Committee observes that the court took note of the fact that in 2015 and 2016, the MPRA received and subsequently spent monetary funding originating from a foreign source, IndustriALL Global Union (Switzerland), on the basis of special-purpose funding agreements. The court then proceeded to examine the activities of the MPRA, in particular, various publications on its website and social media accounts:*

*An inspection of the website mpra.su on 21 July 2017 established that two publications entitled "Platon is no friend of ours" and "Import substitution is becoming a farce" had been posted on the site in 2015, and an inspection of the "MPRA Trade Union" online community on the social network VKontakte indicated that a publication urging readers to support a campaign to amend section 134 of the Russian Labour Code, with an attached hyperlink to the corresponding petition, had been posted in 2016.*

*In the article entitled "Platon is no friend of ours", the trade union supports mass trucker protests against the introduction of a new road tax.*

*The publication entitled "Import substitution is becoming a farce" criticizes a policy implemented by the State authorities, with a view to influencing that policy by shaping public opinions and sparking outcry. ...*

*The content of the publication [in relation to the campaign to amend section 134 of the Labour Code] is politically motivated and aims to influence the design and implementation of State policy in the areas of national socio-economic development, the activities of State authorities and the legislative regulation of civil and human rights and freedoms.*

*Since the dissemination, including via information technology, of opinions relating to the decisions and policies of State bodies and activities aimed at the adoption, amendment or abolition of laws and regulations and the shaping of socio-political views and beliefs represent forms of political activity, the online posting of the above-mentioned publications by the trade union certainly meets the criteria set out in section 2, paragraph 6, of the Law on Non-Commercial Organizations and is thus deemed by the court to constitute political activity.*

*In accordance with section 32, paragraph 7, subparagraph 2, of the Law on Non-Commercial Organizations and section 29, part 6, of the Law on Public Associations, a non-commercial organization or public association that intends to receive monetary funds and other property from foreign sources and participate in political activities within the Russian Federation having officially registered as a legal entity must immediately apply to the authorized body for inclusion in the register of non-commercial organizations performing the functions of a foreign agent.*

- 575.** *The Committee notes that the court dismissed the MPRA's argument that the legislation governing the classification of non-commercial organizations as foreign agents is not applicable to trade unions by reason of the obligations under Convention No. 87 and the relevant national legislation. The court considered that the MPRA's line of argument had no national or international legal basis. With regard to the latter, it considered, in particular, that the rights afforded by Article 5 of Convention No. 87 were not absolute. It stated, moreover, that "legislative provisions relating to non-commercial organizations performing the functions of a foreign agent do not preclude international cooperation, including the receipt of monetary funds from foreign sources or the implementation of political activities, but simply aim to identify a public association as a specific type of legal entity and inform all interested parties accordingly". The court stated that the Law on Non-Commercial Organizations was applicable to all non-commercial organizations established within the Russian Federation, unless explicitly excluded by the relevant legislative provisions, and pointed out that trade unions were not listed among the exclusions. The court concluded that the non-compliance by the MPRA with the requirement of the Law on Non-Commercial*



*Organizations to be included in the register of organizations performing the functions of a foreign agent constituted a serious violation of the legislation.*

- 576.** *Regarding the Prosecutor's claim that the dissemination of the above-mentioned publications ran counter to the MPRA's statutory objectives, the court concluded:*

*... the trade union's activities in support of the initiative to amend section 134 of the Labour Code may be deemed statutory and in line with legislation on trade unions.*

*Meanwhile, the posting of the articles entitled "Platon is no friend of ours" and "Import substitution is becoming a farce" was aimed not at representing or protecting any of the social and labour rights of workers, as the respondent claimed, but at shaping public opinion relating to State policy and influencing that policy in other areas, which is incompatible with the activities of trade unions as defined by law and the statutes of the MPRA.*

- 577.** *The Committee notes that the union appealed this decision and that on 22 May 2018, the Supreme Court overturned it and issued a new ruling in the case. The Committee notes, in particular, that regarding the conformity of the MPRA's statutes with the Law on Trade Unions, the Supreme Court, while agreeing with the court of first instance's conclusion that the specific provisions of the MPRA statutes did not comply with that Law, considered the lower court's position that the MPRA committed gross and irremediable breaches of the law to be erroneous. The Supreme Court pointed out in this regard that the MPRA statutes' non-compliance with the Law on Trade Unions can be remedied by lawful means, namely, by amending them.*
- 578.** *The Committee further notes that the Supreme Court agreed with the court of first instance's assertion that section 1 of the Law on Non-Commercial Organizations, which lists the organizations and institutions exempt from section 2, paragraph 6 of the said Law, does not mention trade unions, and that the legislation in question does not create obstacles to international cooperation, including the receipt of funds from foreign sources, or to the carrying out of political activities. At the same time, the Supreme Court considered "that the breach resulting from the failure of a non-commercial organization performing the functions of a foreign agent cannot be viewed as gross breach warranting the liquidation of the organization".*
- 579.** *As regards the MPRA's activities (two publications), which the court of first instances found to be contrary to the union statutes, the Committee notes that the Supreme Court considered that the breach was not systematic in nature.*
- 580.** *The Committee notes that while there appears to have been attempts to resolve the issues pending in this case at the level of the RTK, they did not lead to the results aspired by the complainant. The Committee notes that in its communication dated 18 November 2020, the KTR requested the Committee to resume the examination of the case.*
- 581.** *The Committee will therefore proceed to examine the following sets of allegations advanced by the complainant following the judicial decisions: (1) restrictive interpretation by the courts of the requirements of the Law on Trade Unions relating to trade union membership and the indication in trade union statutes of the territory within which it shall operate create obstacles to the free establishment and functioning of trade unions; and (2) the application to trade unions of the legislative provisions regulating non-commercial organizations performing functions of a foreign agent further impedes the rights of trade unions. The Committee also notes from the judicial decisions that two articles criticizing the State's policies published by the MPRA were considered to be incompatible with the trade union activities as defined by the law and the statutes of the MPRA. The Committee recalls in this respect that in Case No. 2758 still pending before the Committee, it noted with grave concern that the MPRA's leaflets containing such slogans as "let those who caused the crisis pay for it", "fight substandard*

*employment”, and “we demand our night shift pay” were declared to be extremist material by a local court, which considered that the trade union material in question intended to incite social divisions and hostility. The Committee considered on that occasion that placing leaflets containing such or similar slogans on the list of extremist literature impeded considerably the right of trade unions to express their views and is an unacceptable restriction on trade union activities and, as such, a grave violation of freedom of association. The Committee recalled in this respect that the right to express opinions, including those criticizing the Government’s economic and social policy, was one of the essential elements of the rights of occupational organizations. The Committee urged the Government to take the necessary measures without delay in order to remove the trade union leaflets from the list of extremist literature and to ensure that this did not happen again [see para. 1399, Report No. 365, November 2012]. The Committee last examined Case No. 2758 in June 2015 and on that occasion deeply regretted that, despite its persistent requests, the Government took no measures to ensure that the trade union leaflets in question were removed from the federal list of extremist literature [para. 69, Report No. 375]. The Committee regrets to note that the MPRA’s publications criticizing the State’s policy were declared as being contrary to the law and the union’s statutes and recalls in this respect that the right to express opinions through the press or otherwise is an essential aspect of trade union rights and the full exercise of trade union rights calls for a free flow of information, opinions and ideas within the limits of propriety and non-violence [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para 241]. It further recalls that freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the government’s economic and social policy [see **Compilation**, para. 244]. The Committee requests the Government to take all necessary measures to ensure that the right of trade unions to express opinions, including those criticizing the Government’s economic and social policies is duly protected in law and in practice. It requests the Government to indicate all steps taken to that end.*

- 582.** *The Committee recalls that in Case No. 2758, which concerned allegations of numerous violations of trade union rights, including violations of freedom of opinion and expression, the Government’s interference in trade union matters and refusal by the State authorities to register trade unions, it noted the Proposals of April 2012 for addressing the issues of the application of freedom of association in legislation and practice, which the social partners and the Government have agreed to examine in the framework of the RTK. The Committee noted in particular that the Proposals referred to legislative measures, training activities, adoption of guidelines and explanatory notes as means of addressing the issues of freedom of association in law and in practice and expected that the Proposals would be discussed by the RTK without delay [see Report No. 365, paras 1397 and 1398]. The Committee observes that the issues in this case, as examined below, are closely linked to the issues covered by the Proposals and regrets that these have not been yet resolved, despite a working group being set up in the framework of the RTK, as per the complainant’s indication.*
- 583.** *In this connection and with reference to the case of the MPRA Chairperson, fined for the failure to submit to the Prosecutor certain trade union documents, the Committee notes that point 4.1. of the Proposals calls for the establishment in the legislation of a list of cases in which trade unions may be required to provide information and documents, and establishment of the list of documents which may be required from unions by various state authorities responsible for monitoring trade union activities.*
- 584.** *The Committee recalls that all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing [see **Compilation**, para 332]. It further recalls that the right to decide whether or not a trade union should represent retired workers for the defence*

of their specific interests is a question pertaining to the internal autonomy of all trade unions [see **Compilation**, para. 413] and as a general rule, qualification for membership in trade unions should be decided by the unions themselves in their by-laws. As for an open-ended list of the territories within which the union, an interregional union in this case, shall operate, the Committee recalls that requirements regarding territorial competence and number of union members should be left for trade unions to determine in their own by-laws. In fact, any legislative provisions that go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to Article 3, paragraph 2, of the Convention [see **Compilation**, para. 566].

- 585.** *The Committee further notes point 1.1. of the Proposals which calls to exempt unions from the scope of the administrative regulations for the registration of non-commercial organizations. This is a central point of this complaint as by virtue of the Law on Non-Commercial organizations, trade unions, which, by their nature, as indicated by the Government, are involved in political activities, must register as organizations performing the functions of a foreign agent if they receive funding from foreign sources.*
- 586.** *The Committee further observes that pursuant to the Law on Non-Commercial Organizations (taking into account amendments of December 2020 and March 2021, i.e. the draft Law to which the KTR referred), the status of a foreign agent entails certain additional obligations imposed on a trade union registered as such.*
- 587.** *Firstly, pursuant to section 24 of the Law:*

*Materials produced by a non-commercial organization included in the register of non-commercial organizations performing the functions of a foreign agent, and (or) distributed by it, including through the mass media and (or) using the Internet, materials sent by such an organization to state bodies, local governments, educational and other organizations, information related to activities of such an organization, disseminated through the media, must be accompanied by an indication that these materials (information) were produced, distributed and (or) sent by a non-profit organization performing the functions of a foreign agent, or relate to the activities of such an organization.*

*Materials produced and (or) distributed by the founder, member, participant, head of a non-commercial organization included in the register of non-commercial organizations performing the functions of a foreign agent, or a person who is a member of the body of such a non-commercial organization, when they carry out political activities on the territory of the Russian Federation, materials sent by these persons to state bodies, local self-government bodies, educational and other organizations in connection with the implementation of political activities on the territory of the Russian Federation, information concerning the political activities of these persons, disseminated through the media, must be accompanied by an indication that these materials (information) were produced, distributed and (or) sent by the founder, member, participant, head of a non-commercial organization performing the functions of a foreign agent, or a person who is a member of the body of such a non-commercial organization.*

- 588.** *Secondly, the Committee notes the following additional reporting obligations imposed on “foreign agents” (section 32 of the Law):*
- *Annual mandatory audit of accounting (financial) statements.*
  - *An obligation to file an audit statement, information on programmes scheduled for implementation or being implemented, other documents constituting a basis for the conducting of events, their implementation or information that they have not taken place. The documents must contain information on the purpose of spending the monetary assets and other property received from foreign sources; information on programmes scheduled for implementation and other documents providing a basis for the conducting of events should be submitted before their implementation; information on programmes*

*being implemented and other documents providing a basis for the conducting of events – annually; and a report on the implementation of programmes or information that the corresponding events have not taken place – annually.*

- *An obligation to submit every six months a report on activities and on the composition of the governing bodies and staff.*
- *An obligation to submit quarterly documents on the purpose of spending funds and using other property, including those received from foreign sources.*
- *An obligations to submit once a year an auditor's report.*
- *An obligation to post on internet or to provide to mass media for publication a report on the activities once every six months.*

**589.** *Thirdly, the Committee notes that the same section provides for scheduled (once a year) and unscheduled inspections of non-commercial organizations performing the functions of a foreign agent. The Committee notes that the reasons for unscheduled inspections include the receipt of information from the state authorities, local self-government authorities, citizens or organizations on a violation by a non-commercial organizations performing the functions of a foreign agent of the legislation or its statutes; on non-registration as a foreign agent; and on the participation in events carried out by a foreign or international non-governmental organization whose activities have been declared undesirable on the territory of the Russian Federation. If during an investigation it appears necessary to obtain documents and/or information through inter-agency information exchange, to undertake complex and/or lengthy research or special expert analyses and investigations, the time limit for carrying out the investigation may be extended to 45 working days. The Committee considers that legislation which seriously hampers activities of a trade union or an employers' organization on the grounds that they accept financial assistance from an international organization of workers or employers to which they are affiliated infringes the principles concerning the right to affiliate with international organizations.*

**590.** *Finally, the Committee notes that pursuant to section 32 of the Law, an authorized body can prohibit a non-commercial organization performing the functions of a foreign agent to implement a programme (or part thereof); it must provide a reasoned decision therefor. Failure to execute that decision entails the liquidation of the organization by a court.*

**591.** *The Committee notes that pursuant to section 19.34 of the Code of Administrative Offenses, referred to by the KTR:*

- *the failure to register as a non-commercial organization performing the functions of a foreign agent entails the imposition of an administrative fine on officials in the amount of up to 300,000 rubles and on legal entities – from 300,000 to 500,000 rubles;*
- *the production of materials or their distribution, including through the mass media and/or the Internet, or the sending of materials by such organization to state bodies, etc., without indicating that these materials were produced, distributed or sent by a non-commercial organization acting as a foreign agent entail the imposition of an administrative fine on officials in the amount of up to 300,000 rubles with or without confiscation of the subject of an administrative offense; for legal entities - from 300,000 to 500,000 rubles with or without confiscation of the subject of an administrative offense.*
- *the same done by the founder, member, participant, head of such an organization, entails the imposition of an administrative fine in the amount of 5,000 rubles, with or without confiscation of the subject of an administrative offense.*

**592.** *In the light of the above, the Committee considers that it is difficult to reconcile the additional bureaucratic burdens imposed on trade unions receiving financial assistance from abroad,*

*including from an international trade union to which they are affiliated, as well as various hefty penalties that can be imposed on the organizations, their leaders and members, with the right of trade unions to organize their administration, to freely organize their activities and to formulate their programmes as well as with the right to benefit from international affiliation. The Committee recalls that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions [see **Compilation**, para. 711].*

- 593.** *The Committee considers that the regulations concerning “foreign agents” as applied to trade unions are unjustifiably burdensome and that possibly long and repeated inspections and onerous penalties raise the risk of paralysing the functioning of the affected trade unions. Moreover, the Committee is concerned that the obligation to indicate every material produced and disseminated by an organization performing the function of a foreign agent may negatively affect the image of trade unions and the role they play in the society. The Committee therefore requests the Government to take the necessary steps to find an appropriate solution through social dialogue in order to ensure that the regulations on non-commercial organizations performing the functions of a foreign agent are compatible with the principle of freedom of association. The Committee requests the Government to provide information on all measures taken in this respect. It further expects that the discussion of the above-mentioned Proposals will continue in the framework of the RTK with a view to addressing and resolving all of the issues raised in this and previous cases in line with the Committee’s recommendations. The Committee requests the Government to keep it informed of all developments in this regard.*
- 594.** *The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Convention and Recommendations.*

## **The Committee’s recommendations**

- 595.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to take all necessary measures to ensure that the right of trade unions to express opinions, including those criticizing the Government’s economic and social policies is duly protected in law and in practice. It requests the Government to indicate all steps taken to that end.**
  - (b) The Committee requests the Government to take the necessary steps to find an appropriate solution through social dialogue in order to ensure that the regulations on non-commercial organizations performing the functions of a foreign agent are compatible with the principle of freedom of association. The Committee requests the Government to provide information on all measures taken in this respect.**
  - (c) The Committee expects that the discussion of the April 2010 Proposals will continue in the framework of the RTK with a view to addressing and resolving all of the issues raised in this and previous cases in line with the Committee’s recommendations. The Committee requests the Government to keep it informed of all developments in this regard.**



- (d) **The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Convention and Recommendations.**

## Case No. 3374

Report in which the Committee requests to be kept informed of developments

### **Complaint against the Government of the Bolivarian Republic of Venezuela presented by the Trade Union of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Republic of Venezuela (SUNOFUTRAJUP-MPPRE)**

**Allegations: Anti-union persecution of union leaders and obstruction of an election process and collective bargaining**

- 596.** The complaint is contained in a communication of 3 December 2019 from the Trade Union of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Republic of Venezuela (SUNOFUTRAJUP-MPPRE).
- 597.** The Government sent its observations by a communication of 28 September 2021.
- 598.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

- 599.** In its complaint, the complainant organization alleges anti-union persecution of trade union leaders and obstruction of an election process and collective bargaining. In this regard it states that: (i) the Ministry of Popular Power for Foreign Affairs of the Bolivarian Republic of Venezuela declined to hold discussions with the traditional unions of the Ministry, alleging electoral abeyance (those unions had been unable to elect new executive committees as a result of the many requirements and obstacles imposed by the National Electoral Council); (ii) in particular, in 2013, when the workers authorized the SUTRAB-MRE, SINTRA-MRE and SUNTRA-MRE trade unions to bargain collectively, as they had received no wage increases since 2009 despite high inflation, the authorities of the Ministry denied them, arguing that those unions were in electoral abeyance (they had not elected new executive boards within the statutory time limits); (iii) after another attempt to bargain through a committee of delegates did not succeed in May 2013, the workers met at an extraordinary general assembly on 21 March 2014 and agreed to establish a new trade union – the SUNOFUTRAJUP-MPPRE, with 1,882 members – so as to be able to bargain collectively; (iv) the trade union was registered on 21 April 2014 with an interim executive board for a period of twelve months; (v) during that period, a discussion of a new round of collective bargaining began, which lasted until 16 January 2015 and was never approved by the Ministry of Labour (the non-approval meant that it



was as if the agreement did not exist, as only some clauses were applied); (vi) it was not possible to hold elections, as the elections were challenged by two workers, one of whom was not a union member, and the National Electoral Council ruled that the challenge was well founded; and (vii) as the election of the executive board was impeded, the new trade union found itself in the same situation of electoral abeyance – preventing it from bargaining collectively – that the Ministry had previously cited so as not to bargain with the unions referred to above.

- 600.** The complainant trade union adds that, as a result of this serious situation, the union launched a series of activities and protests – given that the monthly wage was not even sufficient to cover the food basket for one week. The employer responded with a strategy of undermining the trade union: (i) two members of the SUNOFUTRAJUP-MPPRE – Ms Marie Borregales and Ms Ramona Caraballo – were sent to the foreign service; (ii) a further two members – Mr Luis Rondón and Ms Oramaica Espinoza – had to leave the union; and (iii) the top three members of the executive board – Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo – were threatened with dismissal, and proceedings to remove their union immunity were successively approved (for which the complainant submits the relevant documentation), resulting in their dismissal. The complainant rejects the Government’s version of events alleging that this was an individual situation that affected only these three people, and emphasizes that it is an ongoing policy of denying freedom of association and collective bargaining.
- 601.** As for the case of Mr José Patines Guanique, General Secretary of the union, an application to remove his trade union immunity (and thereby remove his immunity from transfer or dismissal) and to dismiss him, which had been submitted by the Ministry to the Labour Inspectorate, was approved on 29 July 2019. The Labour Inspectorate accepted the employer’s argument that Mr Patines Guanique “shared images unrelated to trade union activities” on his personal Twitter account (despite the fact that they were actually of trade union activities, showing the General Secretary participating in a trade union event with representatives of the National Assembly demanding the restitution of the right to bargain collectively in the public administration) and “organized protest action”, which it characterizes as immoral conduct, slanderous allegations and serious misconduct. The complainant considers that this demonstrates that both the employer and the entity of the labour administration are attempting to have the workers of the Ministry of Foreign Affairs persecuted – and, in the case of the three leaders, dismissed – for having protested and expressed their ideas and legitimate claims in public, and that the Government considers the exercise of freedom of expression and the right to protest – in this instance, to demand better pay and working conditions – to be immoral, slanderous and serious misconduct. Furthermore, the complainant reports that the Labour Inspectorate accepted the employer’s challenge to the evidence submitted by the worker, which among other things demonstrates that he enjoys immunity from being transferred or dismissed on the grounds of parenthood as well as trade union immunity.
- 602.** As for the cases of Mr Jesús Serrano and Ms Besse Mouzo, the Labour Inspectorate approved the applications for removal of union immunity submitted by the Ministry of Foreign Affairs on the grounds of the same conduct previously denounced by the authorities. The Labour Inspectorate accepted the evidence tendered by the Government, dismissed the evidence tendered by the workers and removed the leaders’ protection from dismissal or transfer resulting from their trade union immunity. For example, the evidence against Ms Mouzo consists of: a copy of an image of a public trade union event seeking humanitarian aid (exhibit 1); a copy of a news portal in which it is reported that workers in the Ministry of Foreign Affairs have been victims of persecution for having demanded their

rights (exhibit 2); and a press release of 6 March 2019 entitled “Workers in the Ministry of Foreign Affairs to join staggered strike”.

- 603.** The complainant states that these three cases concern the same accusations and the same violation of freedom of thought and expression and of the right to protest, thus demonstrating how in the Bolivarian Republic of Venezuela the labour inspectorates do not defend the worker but instead functionally benefit the Government, having acted in this case as an ally of the Ministry of Foreign Affairs. The complainant therefore considers that the Government has free reign to violate freedom of association with the support of the Ministry of Labour and its inspectorates. The complaint ends by emphasizing that the issues raised are an expression of the problem indicated by the Commission of Inquiry, that is, that there exists a complex web that is hostile to and undermines the action of employers’ and workers’ organizations that are not close to the Government.

## B. The Government’s reply

- 604.** In its communication of 28 September 2021, the Government submits the information received from the competent authorities in relation to the case. As to the allegations concerning collective bargaining, the Government considers that they are related to the alleged application of Memorandum No. 2792 of the Ministry of Popular Power for the Social Process of Labour. In this connection, the Government indicates that: (i) the content of said memorandum, which was unrelated to the structure and functioning of the Ministry of Foreign Affairs, indicates the extraordinary corrective measures of the Recuperation, Growth and Economic Prosperity Plan, under which it was necessary to implement consensus-based (that is, agreed by workers and employers) bargaining strategies that were different from those that were usually developed; (ii) at no point were such guidelines – which allowed sources of employment and jobs to be maintained– imposed unilaterally; rather, they were applied at the request of the parties; (iii) the provisions of the said memorandum were superseded by events, demonstrating that the workers’ and employers’ representatives had been engaging in collective bargaining; and (iv) in view of the concerns raised by some organizations about the memorandum, on 7 June 2021 a new internal memorandum of guidelines was produced, to endorse the national labour policy on the discussion and signing of collective agreements, in the context of freedom of association and without any restrictions other than those established in national legislation.
- 605.** As to the alleged anti-union discrimination against the trade union leaders, the Government states that: (i) Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo participated in public events, adopting a personal position and expressing their own opinions, without the agreement of the trade union organization of which they were members, acted contrary to the top representatives of the ministry employing them, against which it proffered insults and threats, as well as attempting through the use of force to disrupt work and impede workers’ access to the facilities of the Ministry – acting with solely political motives in the political context of the absurd proclamation of a so-called “interim president” who led them to engage in conduct that is contrary to trade union ethics and any political activity under a democracy; (ii) these actions led the employing ministry to request the labour administration to characterize the offences committed by those workers, as they were protected by trade union immunity; (iii) the administrative proceedings to lift the immunity of Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo were substantiated in accordance with the law, following due process, by the Labour Inspectorate, which reports to the Ministry of Popular Power for the Social Process of Labour; (iv) under the national legislation, and regardless of the

fact that the workers' actions were unrelated to trade union activity, the protection afforded by trade union immunity means that a labour administrative authority, and not the employing ministry, must determine whether there is just cause – a prerequisite for applying the disciplinary proceedings to two of the workers, who are career officials; and (v) as the workers disputed the arguments put forward by the employer, an evidentiary phase was opened.

- 606.** The administrative decisions of the Labour Inspectorate of the Ministry of Popular Power for the Social Process of Labour submitted by the Government set out reasons for the authorization of the dismissal of and lifting of trade union immunity from the trade unionists, after having established that they publicly (particularly through messages on the Twitter social network) condemned and disrespected their employer, and in the case of Mr Patines Guanique, called for a staggered strike in the Ministry. The Labour Inspectorate considered that this condemnation of and disrespect towards their employer showed a lack of integrity or immoral conduct at work, slanderous allegations or serious misconduct in relation to the respect and consideration owed to an employer, and serious misconduct in relation to the obligations imposed by the employment relationship. Furthermore, the Labour Inspectorate set aside all of the evidence tendered by the workers concerned, who had disputed and contradicted the allegations of the public employer that was seeking to have their union immunity lifted.
- 607.** The Government concludes by indicating that, after all legal formalities had been complied with, the Labour Inspectorate found the applications for lifting of trade union immunity to be substantiated. In the case of Mr Patines Guanique (whose dismissal the Labour Inspectorate also authorized), he was informed of the termination of his employment relationship, and in the cases of Mr Jesús Serrano and Ms Besse Mouzo (career officials), disciplinary proceedings were initiated in accordance with the applicable law, the outcome of which was to remove their status of career officials.

## C. The Committee's conclusions

- 608.** *The Committee observes that this complaint refers to allegations of anti-union persecution of trade union leaders and obstruction of an electoral process and collective bargaining.*
- 609.** *As to the allegations of anti-union discrimination against the trade union leaders, the Committee notes that the Government contends that this is an individual situation that affects only three people who were not representing the trade union in the actions that led to their dismissal, that the actions constituted serious misconduct in breach of trade union ethics and any political activity in a democracy, and that they were not union-related actions but political actions. However, the Committee observes that the trade union denies that they were individual actions unrelated to trade union activities and argues that they were in the legitimate exercise of freedom of expression and the right to protest and that the dismissals are part of an ongoing policy of undermining freedom of association and collective bargaining.*
- 610.** *The Committee notes that the administrative decisions lifting trade union immunity, which were submitted by the Government to deny the existence of anti-union discrimination, consider as the key evidence to justify the lifting of these workers' union immunity the public condemnation of and disrespect towards the public employer. In this regard, the Committee observes that, while the complainant argues with specific examples that the evidence on which the Labour Inspectorate founded the decisions to lift immunity related to legitimate trade union activities (such as participating in action calling for the restitution of the right to bargain collectively in the public administration), the information submitted by the Government does not specify the purported content of the statements that the Labour Inspectorate considered*

to be condemnation of and disrespect towards the employer and that led to the dismissal of the trade union leaders.

611. *In the light of the above, the Committee observes with concern that the actions that purportedly justified the dismissal of the union leaders, Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo, appear to be linked to the legitimate exercise of their freedom of association, through protesting and exercising their freedom of expression.*
612. *In this regard, the Committee recalls that freedom of opinion and expression constitutes one of the basic civil liberties essential for the normal expression of trade union rights, that no person should be prejudiced by reason of legitimate trade union activities and that cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 233 and 1077].*
613. *In these circumstances, the Committee urges the Government to take the necessary measures to conduct an independent inquiry into the allegations raised in the complaint of anti-union discrimination against the union leaders, Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo, with a view to ensuring due respect for their freedom of expression and to protest in the exercise of freedom of association. In the event that anti-union acts are established, the Committee requests the Government to take the necessary measures to reinstate and compensate the workers concerned and to keep the Committee informed of the outcome.*
614. *As to the remaining issues raised by the complaint, the Committee notes that the Government provides information on the application of a memorandum on extraordinary measures to implement different bargaining strategies from those usually developed, and emphasizes that these provisions were superseded. However, the Committee observes that the Government does not respond to the allegations raised in the complaint of obstruction of an election process and of collective bargaining and the link to electoral abeyance. In this respect, the Committee recalls that the Commission of Inquiry in relation to the Bolivarian Republic of Venezuela examined this problem in general, as well as a number of specific cases raising similar allegations, and concluded that the institutions, rules and practices examined that were applied to trade union election processes were in violation of freedom of association as they are prejudicial to the independence that must be enjoyed by organizations in this regard, allow options close to the Government to be favoured and contribute to undermining the independent trade union movement and the capacity for action of both workers' organizations and employers and their organizations in their relations with workers' organizations. Consequently, the Commission of Inquiry recommended the elimination of electoral abeyance and the reform of the rules and procedures governing trade union elections, so that the intervention of the National Electoral Committee is really optional, does not constitute a mechanism for interference in the life of organizations, the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of employers' and workers' organizations.*
615. *The Committee observes that the case raised in the complaint provides a further example of the serious problems identified by the Commission of Inquiry: as a result of difficulties in meeting the requirements of the regulation of electoral abeyance which was preventing the existing organizations from bargaining, the workers had to create a new trade union, which encountered problems in electing a new executive board and, as a result of delays in the process and the lack of approval of what was agreed by the authorities, it too was ultimately stripped of its right to bargain collectively. In the light of the foregoing, the Committee refers to the recommendations of the Commission of Inquiry concerning electoral abeyance and the rules and procedures governing trade union elections, and requests the Government to keep*

*it informed of the development of collective bargaining between the Ministry of Popular Power for Foreign Affairs and the organization or organizations representing the workers in the Ministry.*

## The Committee's recommendations

**616.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee urges the Government to take the necessary measures to conduct an independent inquiry into the allegations of anti-union discrimination against the union leaders, Mr José Patines Guanique, Mr Jesús Serrano and Ms Besse Mouzo, that were raised in the complaint, with a view to ensuring due respect for their freedom of expression and to protest in the exercise of freedom of association. In the event that anti-union acts are established, the Committee requests the Government to take the necessary measures to reinstate and compensate the workers concerned and to keep the Committee informed of the outcome.
- (b) The Committee refers to the recommendations of the Commission of Inquiry concerning electoral abeyance and the rules and procedures governing trade union elections, and requests the Government to keep it informed of the development of collective bargaining between the Ministry of Popular Power for Foreign Affairs and the organization or organizations representing the workers in the Ministry.

Geneva, 4 November 2021

*(Signed)* Professor Evance Kalula  
President

*Points for decision:*

paragraph 77	paragraph 306
paragraph 99	paragraph 348
paragraph 119	paragraph 383
paragraph 140	paragraph 426
paragraph 157	paragraph 452
paragraph 172	paragraph 485
paragraph 188	paragraph 507
paragraph 230	paragraph 528
paragraph 257	paragraph 595
paragraph 273	paragraph 616