

Governing Body

344th Session, Geneva, March 2022

Institutional Section

INS

Date: 8 March 2022

Original: Spanish

Sixteenth item on the agenda

Report of the Director-General

Sixth supplementary report: Report of the Committee set up to examine the representation alleging non-observance by Argentina of the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

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► I. Introduction

1. By communications dated 12 June, 27 July and 28 July 2020, the Confederation of Workers of Argentina (CTA), the State Workers Association (ATE) and the Education Workers Union (UTE) submitted a representation to the International Labour Office pursuant to article 24 of the ILO Constitution, alleging non-observance by the Government of Argentina of the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), ratified by Argentina on 13 January 2014. Both Conventions remain in force in that country.
2. The following provisions of the ILO Constitution relate to the representation procedure:

Article 24

Representations of non-observance of Conventions

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

Article 25

Publication of representation

1. If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.
3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Argentina and brought it before the Officers of the Governing Body.
4. At its 340th Session (November 2020), the Governing Body decided that the representation was receivable and decided to set up a tripartite committee to examine it. The Committee is composed of Ms Sara Gabriela Luna Camacho (Government member, Mexico), Mr Fernando Yllanes Martínez (Employer member, Mexico) and Ms Paola del Carmen Egúsqiza Granda (Worker member, Peru).
5. The Government of Argentina submitted its observations concerning the representation in communications received by the Office on 28 May and 9 June 2021. The Committee has been informed that the parties initiated a voluntary conciliation process at the national level, with the technical assistance of the Office, in the framework of which they were unable to reach an agreement.
6. The Committee met virtually on 23 February and 2 March 2022 to examine the representation and adopt the report.

► II. Examination of the representation

A. The complainants' allegations

7. In their communications, the complainant organizations refer to the occupational safety and health (OSH) measures concerning the public workers providing essential services for the Autonomous City of Buenos Aires (CABA), who were exempted from the Preventive and Compulsory Social Isolation Decree No. 147 AJG-GCBA/20 (ASPO) and, therefore, obliged to continue providing services in person in the context of the COVID-19 pandemic. In particular, they indicate that the CABA government, in its capacity as employer, does not comply with occupational protection, prevention and safety measures with respect to the aforementioned city workers, by not providing them with the personal protective equipment (PPE) (inter alia, masks, face shields, gowns, gloves and alcohol, necessary to prevent infection with and spread of the coronavirus COVID-19). In the opinion of the complainant organizations, this behaviour violates both internal OSH regulations, including Provision No. 202-5-GG/SRT, which guarantees the working conditions for workers providing essential services who are exempted from the ASPO, as well as the OSH principles recognized in ILO Conventions No. 155 and No. 187.
8. The complainant organizations allege that the CABA health sector workers had already requested the CABA government to provide the city's hospitals with PPE before the pandemic was declared, but the situation worsened following the onset of the pandemic. According to the complainant organizations, in such a context the lack of PPE and training programmes seriously endangers the health and safety of the workers concerned, not only in physical terms due to the increased risk of COVID-19 infection, but also in mental terms due to the severe work-related stress that this risk entails.
9. The complainant organizations also indicate that they submitted notifications to the relevant institutions of the CABA government, calling for the delivery of PPE and requesting the establishment of institutionalized dialogue, coordination and collaboration with the authorities of the executive branch of the city in order to combat the expansion and spread of COVID-19. They indicate, however, that those notifications did not elicit any response.
10. Finally, the complainant organizations allege that, given the silence of the executive authorities of the city in response to the requests of the unions and given the situation of the absence of PPE in different areas of the essential services provided by the CABA, they requested preliminary injunctions before the CABA Civil, Administrative and Tax Court.¹ In this regard, the complainant organizations, who submitted extracts of the relevant court decisions,² indicate that the court granted the requests for preliminary injunctions and ordered the CABA government, inter alia, to adopt the necessary measures to prevent infection with COVID-19,

¹ The complainant organizations refer to the following legal proceedings: (1) *UTE v. CABA government and others on a motion for a preliminary injunction*, file No. 3018/2020-0, CABA Civil, Administrative and Tax Court No. 13, Registry No. 26, filed on 9 April 2020; (2) *Catalano Daniel v. CABA government and others on a motion for a preliminary injunction*, file No. 3072/2020-1, CABA Civil, Administrative and Tax Court No. 18, Registry No. 36, filed on 23 May 2020; and (3) *ATE and others v. CABA government and others on a motion for a preliminary injunction*, file No. 3817/2020-0, CABA Civil, Administrative and Tax Court No. 4, Registry No. 8, filed on 23 May 2020.

² See the following decisions of the CABA Civil, Administrative and Tax Court: *Proceedings of UTE v. CABA government and others on a motion for a preliminary injunction*, 10 April 2020; *Proceedings of Catalano Daniel and others v. CABA government and others on a motion for a preliminary injunction*, 28 May 2020; and *Proceedings of ATE and others v. CABA government and others on a motion for a preliminary injunction*, 23 May 2020.

including the immediate provision of PPE to workers exempted from the ASPO, according to the activity and task to be carried out by each worker. The complainant organizations allege that the CABA government did not comply with those injunctions.

B. The Government's response

11. In its reply, received on 28 May and 9 June 2021, the Government provides the response sent by the CABA government set out below. In particular, the response indicates that article 11 of Decree No. 147-AJG-GCBA/20, which contains provisions on the administration of human resources in public administration, establishes the exceptions to the duty to attend the workplace, which include, among other categories, workers more than 60 years of age; pregnant workers; workers included in risk groups defined by the competent health authority; workers duly authorized to provide remote and temporary services; and workers who are covered by the exemption from the duty of attendance at the workplace and whose usual tasks or other tasks compatible with their curricular profile and suitability can be performed from a remote location. The CABA government adds that resolution No. 622-GCABA-SSGRH/20 approved an extraordinary leave of absence, with full pay, for the public administration workers of the CABA government who are dependent on the executive branch, legally decentralized bodies and municipalities, irrespective of rank and type of contract, within the framework of the exemption from the duty of attendance at the workplace.
12. With respect to workers in the education sector, the CABA government indicates that, within the framework of the protocol for the resumption of on-site classes in 2021 approved by resolution No. 1-GCABA-MEDGC/21 (jointly signed) in order to strengthen hygiene and disinfection measures in educational locations, back-to-school biosafety kits were delivered, consisting of a digital infrared thermometer, a pedal-operated alcohol gel dispenser, marking tape, an alcohol canister, masks, face shields, macrofibre cloths, diffusers and bottles of 70 per cent alcohol, rolls of paper, information leaflets, a letter and an instruction manual. The CABA government also indicates that all teachers were given masks for personal use, alcohol diffusers to disinfect their desks and a thermometer to check their temperature at the start of the workday.
13. The CABA government indicates that the aforementioned protocol establishes general mandatory guidelines for students, teaching and non-teaching staff and any other person who must enter and/or remain in the establishment, including: (i) physical distancing of 1.5 metres; (ii) the use at all times of masks that must completely cover the nose, mouth and chin; and (iii) checking the temperature of all persons who enter the educational establishment in order to prohibit entry for any person whose temperature is equal to or exceeds 37.5°C. The CABA government also indicates that, according to this protocol, in the case of students for whom, owing to their age or special characteristics, it is not possible to comply with physical distancing or the use of a mouth covering, the remaining measures must be applied.
14. The CABA government also indicates that since the reopening of educational establishments to commence in-person classes, the Protocol Monitoring Commission has been established, as approved by resolution No. 1-MEDGC/21, in the framework of which ten meetings were held, with the participation of all trade union associations representing teachers and janitorial assistants, including the UTE and the ATE. The Government provides the minutes of eight of these meetings.

15. Finally, regarding the status of the judicial proceedings mentioned by the complainant organizations, the CABA government indicates that:

- (a) Education Sector. *UTE v. CABA government and others on a motion for a preliminary injunction* (file No. 3018/2020-0):³ (i) on 10 April 2020, the requested injunction was granted and the CABA government was ordered to immediately adopt the necessary measures to prevent the infection of teachers who were exempted from the ASPO and to provide them with the necessary PPE to prevent their infection with COVID-19; and (ii) on 20 August 2020, the injunction was declared to have expired (lapse of right).
- (b) Health Sector. *Catalano Daniel v. CABA government and others on a motion for a preliminary injunction* (file No. 3072/2020-1):⁴ (i) on 28 April 2020, the judge ordered the CABA government to immediately provide CABA health sector workers, according to the needs of the area and the sector, with all the elements for adequate protection in order to prevent the spread of COVID-19; (ii) on 30 April 2020, compliance with the preliminary injunction was confirmed by a declaration that the delivery of PPE and due coverage was guaranteed in the city area, with an inventory drawn up and an action plan prepared to that effect; (iii) on 4 May 2020, a report was submitted by the Ministry of Health stating that the Director-General of Hospitals had not received any complaints about shortages of PPE, specifying the total current stock of PPE, and on 14 May compliance with the preliminary injunction was confirmed; (iv) on 5 June, it was decided to confirm the preliminary injunction on the point corresponding to the need for the CABA government to deliver adequate PPE to workers, in the quantity, form and regularity appropriate to the tasks performed, and on 25 June 2020, the presiding judge ordered the CABA government to reinforce compliance with the preliminary injunction within 5 days; (v) on 3 September 2020, in response to a complaint of non-compliance with the court decision, full compliance with the measure was ordered in accordance with the requirements of the resolution of 25 June 2020; and (vi) the case remains pending by virtue of the complaints of non-compliance filed.
- (c) Sector of Institutions Housing Children and Adolescents. *ATE and others v. CABA government and others on a motion for a preliminary injunction* (file No. 3817/2020):⁵ (i) on 23 May 2020, the preliminary injunction was upheld and the CABA government was ordered to immediately provide the workers of the Council for the Rights of Children and Adolescents (CDNNA), as well as the children housed in the premises of that body, with the necessary PPE to prevent the spread of COVID-19 and the appropriate disinfection and sanitation kits, and to adopt the other necessary measures to prevent the spread of said disease; (ii) this decision was appealed on 25 May 2020 and the appeal was granted; (iii) on 24 July 2020, an extension of the preliminary injunction was issued, ordering the CABA government to adopt the appropriate protective measures to guarantee the right to health and comprehensive protection of children and adolescents in all the institutions housing them; (iv) on 14 August, the judge established an Institutional Coordination Board (MAI) for the case in order to establish common ground between the parties with the aim of better implementing the pandemic-related measures; and (v) on 28 December 2020, the CABA government was requested to assist the MAI and to strictly comply with the order, which was complied with by a presentation on 1 February 2021.

³ Pending before the CABA Civil, Administrative and Tax Court No. 3, Registry No. 5.

⁴ Pending before the CABA Civil, Administrative and Tax Court No. 18, Registry No. 36.

⁵ Pending before the CABA Civil, Administrative and Tax Court No. 9, Registry No. 17.

► III. The Committee's conclusions

16. The conclusions are based on the Committee's examination of the complainant organizations' submissions and the CABA government's response submitted by the Government. The Committee notes that the complainant organizations allege the following facts, which in their view violate the provisions of Conventions No. 155 and No. 187: (1) The CABA government, in its capacity as employer, did not provide public sector workers providing essential services of the CABA (in particular workers in education, health and institutions housing children and adolescents, exempted from compulsory isolation ⁶ in the context of the COVID-19 pandemic) with PPE and did not provide the necessary training programmes to prevent infection with and spread of the virus, putting at risk the health and safety of the workers concerned, both physically and mentally. ⁷ The complainant organizations add that, within the framework of three judicial processes that they mention ⁸ in relation to health workers, education workers and workers in institutions housing children and adolescents, the respective lower court judges granted the motions for preliminary injunctions filed by the complainant organizations and ordered the CABA government to urgently deliver the aforementioned PPE to the workers concerned; and (2) No dialogue and coordination between the executive branch of the CABA and the unions has been established in order to collaborate in the fight against the spread of COVID-19, despite the requests of the complainant organizations to that effect.
17. With regard to the allegations concerning the education sector, the Committee notes that the CABA government indicates that: (i) in the framework of the protocol for the resumption of on-site classes in 2021 approved by resolution No. 1-GCABA-MEDGC/21 (jointly signed), back-to-school biosafety kits were delivered, consisting of a digital infrared thermometer, a pedal-operated alcohol gel dispenser, marking tape, an alcohol canister, masks, face shields, microfibre cloths, diffusers and bottles of 70 per cent alcohol, rolls of paper, information leaflets, a letter and an instruction manual; (ii) all teachers were issued with masks for personal use, alcohol wipes to disinfect their desks and a thermometer to check their temperature at the start of the workday; and (iii) on 10 April 2020, a preliminary injunction was issued in the framework of *UTE v. CABA government and others on a motion for a preliminary injunction*, ordering the CABA government to immediately adopt the necessary measures to prevent the infection of ASPO-exempted teachers and provide them with the necessary PPE to avoid their infection with COVID-19, but on 20 August 2020 the preliminary injunction was declared to have expired.
18. With regard to the allegations concerning the health sector, the Committee notes that in its response, the CABA government reports that, in the context of *Catalano Daniel v. CABA government and others on a motion for a preliminary injunction*: (i) on 30 April 2020, the CABA government confirmed its compliance with the preliminary injunction by stating that the delivery of PPE and due coverage was guaranteed within the city limits, drawing up an

⁶ By Decree No. 147/2020.

⁷ The complainant organizations indicate that the lack of supply of PPE had already been raised by the health sector unions before the declaration of the pandemic, but that the situation worsened with the onset of the pandemic and continued despite the notifications sent by them to the CABA executive authorities.

⁸ (1) *UTE v. CABA government and others on a motion for a preliminary injunction*, file No. 3018/2020-0, CABA Civil, Administrative and Tax Court No. 13, Registry No. 26, filed on 9 April 2020; (2) *Catalano Daniel v. CABA government and others on a motion for a preliminary injunction*, file No. 3072/2020-1, CABA Civil, Administrative and Tax Court No. 18, Registry No. 36, filed on 23 May 2020; and (3) *ATE and others v. CABA government and others on a motion for a preliminary injunction*, file No. 3817/2020-0, CABA Civil, Administrative and Tax Court No. 4, Registry No. 8, filed on 23 May 2020.

inventory and preparing a plan of action to that effect; (ii) on 4 May 2020, a report from the Ministry of Health was submitted to the relevant judicial authority, stating that the General Director of Hospitals had not received any complaints about shortages of PPE and specifying the total current stock of PPE; (iii) on 14 May, compliance with the preliminary injunction was confirmed and a report from the General Directorate of Hospitals was enclosed, indicating that there were no shortages of PPE; and (iv) in the face of new complaints by the complainant organizations of non-compliance with the judicial decision, the court ordered the CABA government in September 2020 to fully comply with the injunction and to provide evidence in November 2020 of compliance with the precautionary measure; at present, the notifications resulting from the complaints of non-compliance filed on 17 February 2021 are pending and, once they have been processed, the presiding judge will summon to a hearing all parties and the highest-level official of the Ministry of Health of the CABA government who is competent in that area and has knowledge of the problem and the capacity to reach agreement or make commitments and provide explanations.

19. With regard to the allegations concerning the institutions that house children and adolescents, the Committee notes that the CABA government reports that, in the framework of *ATE and others v. CABA government and others on an autonomous precautionary measure*, it was ordered to adopt appropriate protective measures to guarantee the right to health and comprehensive protection of children and adolescents in all institutions housing them, and that strict compliance with the order was given, which was communicated to the judicial authority on 1 February 2021.
20. In general, the Committee wishes to recall that Article 3 of Convention No. 155 prescribes that the term "health", in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to OSH. Similarly, Article 16(1) of Convention No. 155 provides that employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and operations and processes under their control are safe and without risk to the health of workers, and that Article 16(3) requires employers to provide, where necessary, appropriate protective clothing and equipment to prevent, so far as is reasonably practicable, risks of accidents or adverse effects on health. Finally, the Committee wishes to emphasize that Article 3(2) of Convention No. 187 requires each Member to promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.
21. While noting the detailed information provided by the CABA government on the measures that have reportedly already been taken (see paragraph 15 above), the Committee observes that with regard to the three motions for preliminary injunctions brought before the courts that were mentioned by the complainant organizations, which concern the lack of provision of PPE in the education and health sectors and in institutions housing children and adolescents, the CABA government was ordered to adopt the necessary measures to prevent the spread of COVID-19, including the immediate provision of PPE to workers exempted from the ASPO, in accordance with the activity and task to be carried out by each worker. In this regard, the Committee notes that one of the preliminary injunctions (*UTE v. CABA government and others on a motion for a preliminary injunction* (education sector)) expired on 20 August 2020, while the others concerning the health sector and the institutions housing children and adolescents are still in force due to new allegations of non-compliance. On this basis and in the absence of new allegations in this regard, the Committee considers that the expiration of the preliminary injunction concerning the lack of provision of PPE in the education sector tends to indicate that appropriate measures have begun to be taken in the education sector with a view to preventing, so far as is reasonably practicable, the risks of accidents or adverse health effects

linked to the transmission of COVID-19. The Committee also considers that, as far as the health sectors and institutions housing children and adolescents are concerned, the information at its disposal is not sufficient to assess objectively whether the provision of PPE is carried out in these sectors taking into consideration the relevant articles of Conventions No. 155 and No. 187. ***In these circumstances, while taking note of the dialogue initiated in relation to this representation (see paragraph 5), the Committee recommends that the Government continue its efforts to ensure that, so far as is reasonably practicable, workplaces in the essential services area are safe and without risk to the safety and health of workers, as required by Article 16(1) of Convention No. 155. The Committee further recommends that the Government, in collaboration with the representative organizations of employers and workers concerned, periodically review the status of the provision of PPE in the different sectors of essential services with a view to preventing, so far as is reasonably practicable, the risks of accidents or adverse effects on the health of such workers in the context of the current pandemic, in accordance with Article 16(3) of Convention No. 155.***

22. In relation to the complainant organizations' allegation regarding the lack of institutionalized dialogue and coordination of the executive branch with the city's trade unions in relation to the pandemic, the Committee notes that the complainant organizations allege that, given the lack of PPE in the CABA's essential services institutions, they requested the establishment of institutionalized dialogue and coordination and collaboration with the authorities of the city's executive branch in order to combat the spread and spread of COVID-19. However, the complainant organizations claim that these requests remained unanswered. In this respect, the Committee takes note of the Government's reply that: (i) as soon as the period for opening educational establishments for in-person sessions began, the Protocol Monitoring Commission (approved by resolution No. 1-MEDGC/21) was set up to monitor the implementation of the protocol, in the framework of which ten meetings were held, with the participation of all the trade union associations representing the teachers and the workers representing the auxiliary porters, among them the UTE and the ATE (the Government sent the minutes of eight of these meetings); and (ii) in the framework of *ATE and others v. CABA government on a motion for a preliminary injunction* (file No. 3817) on the delivery of the PPE to workers in institutions housing children and adolescents, on 14 August 2020 the creation of the MAI for the case was ordered, bringing together the unions, the managers of the government areas involved and other institutional actors with the aim of contributing and being heard, in order to achieve a better implementation of both general and specific measures in institutions housing children and adolescents in the context of the pandemic.
23. With regard to the education sector, the Committee notes that according to the information provided by the CABA government, the education workers' organizations have an institutional framework within which consultations of workers' organizations with the authorities of the CABA executive branch are held. The Committee also notes that with regard to institutions housing children and adolescents, the aforementioned MAI, of which the relevant CABA government authorities are part, met with the unions of this sector, the managers of the government areas involved and other institutional actors on 6 October 2020. With regard to the CABA health sector workers, the Committee notes that the Government did not submit information regarding areas of dialogue with the representatives of these workers. The Committee recalls that Article 3(3) of Convention No. 187 stipulates that: "In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventive safety and health culture that includes information, consultation and training." **The Committee also recalls that Article 4(1) of**

Convention No. 155 provides that each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on OSH and the working environment. *In this regard and taking into account the serious health situation caused by the COVID-19 pandemic, the Committee underlines the importance of a comprehensive social dialogue with all representative workers' and employers' organizations in the sectors concerned when taking measures to find effective and sustainable solutions to the crisis. In these conditions, while welcoming the existence of some areas of dialogue already established, the Committee trusts that the work of these forums will continue and, if deemed necessary, invites the parties to establish new areas of dialogue in accordance with the provisions of Articles 4(1) of Convention No. 155 and 3(3) of Convention No. 187.*

24. The Committee reminds the Government that it may avail itself of the Office's technical assistance if it deems it appropriate.

► IV. The Committee's recommendations

25. In the light of the conclusions contained in paragraphs 21 and 23, the Committee recommends that the Governing Body:
- (a) approve the report;
 - (b) remind the Government that it may avail itself of ILO technical assistance if it deems it appropriate;
 - (c) invite the Government to submit, in its next report to the Committee of Experts on the Application of Conventions and Recommendations, information related to the above-mentioned conclusions, in particular with regard to the matters covered in paragraphs 21 and 23 of this report; and
 - (d) publish the report and declare closed the procedure resulting from the representation.

Geneva, 2 March 2022

(Signed) Sara Gabriela Luna Camacho
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