INTERNATIONAL LABOUR OFFICE

Governing Body

327th Session, Geneva, 11 June 2016

GB.327/INS/5/4

Institutional Section

INS

Date: 11 March 2016
Original: French

FIFTH ITEM ON THE AGENDA

Report of the Director-General

Fourth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Portugal of the Forced Labour Convention, 1930 (No. 29), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made under article 24 of the ILO Constitution by the National Federation of Unions of Workers in the Public and Social Services (FNSTFPS)

I. Introduction

1. In a communication dated 25 July 2014, the National Federation of Unions of Workers in the Public and Social Services (FNSTFPS) made a representation to the International Labour Office, in accordance with article 24 of the Constitution of the International Labour Organisation (ILO), alleging non-observance by Portugal of the Forced Labour Convention, 1930 (No. 29), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). A summary of this representation is attached as an annex hereto.

2. Portugal ratified Convention No. 29 on 26 June 1956 and Convention No. 111 on 19 November 1959. Both Conventions are in force for Portugal.

3. The provisions of the Constitution concerning the submission of representations are as follows:

Article 24

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

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.

4. The representation procedure is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution, as revised by the Governing Body at its 291st Session (November 2004).

5. In accordance with articles 1 and 2(1) of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of Portugal and brought the matter before the Officers of the Governing Body.

6. At its 322nd Session (October–November 2014), the Governing Body decided that the representation was receivable and appointed the members of a tripartite committee to examine the matter, namely, Ms Rosanna Margiotta (Government member, Italy), Ms Garance Pineau (Employer member, France), and Mr Bernard Thibault (Worker member, France).

7. The Government of Portugal submitted its written observations in reply to the representation in a communication dated 23 March 2015.

8. The Committee held its first meeting on 24 March 2015 and subsequent working meetings on 5 November 2015, 17 March and 31 May 2016. At its meeting on 5 November 2015, the tripartite committee requested additional information from the Government of Portugal and the FNSTFPS regarding:

– consultations that should have been held with the social partners on the adoption of employment insertion contracts (CEI) and on the possible conclusion of a tripartite agreement on the subject; and

– the working conditions of CEI beneficiaries, comparing them to those of public sector employees performing the same tasks.

9. Additional information was sent by the Government on 15 March 2016 and by the FNSTFPS on 17 March 2016.

II. Examination of the representation

A. The complainant's allegations

10. In a communication dated 25 July 2014, the FNSTFPS alleges that, by creating so-called "employment insertion contracts" (CEI) and "employment insertion contracts+" (CEI+), [1] Portugal violated Articles 1(1) and 25 of the Forced Labour Convention, 1930 (No. 29), and Article 2 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

11. These contracts establish "socially necessary work", defined as the performance, by unemployed persons registered with the Institute of Employment and Vocational Training (IEFP), of work that meets temporary social or community needs. The CEI are intended for unemployed persons who receive unemployment benefits or social welfare benefits. The CEI+ are intended for unemployed persons who receive social insertion income or who do not receive any benefits and have been registered with the IEFP as unemployed for at least 12 months. In awarding contracts to unemployed persons, priority is given to persons with disabilities, the long-term unemployed, unemployed persons of 45 years of age and over, former prisoners and persons serving a non-custodial sentence.

12. The FNSTFPS states that public and private non-profit associations, including the following, are eligible for CEI and CEI+: public services that are engaged in activities designed to respond to social or community needs, are not seeking to fill vacant positions and offer beneficiaries prior training; local authorities; and charitable organizations. Local private sector associations may also apply if their membership includes municipalities.

13. By law, beneficiaries of these contracts may refuse them if the activities are not suited to their physical abilities, skills or work experience, or if the time required for travel between their home and the workplace exceeds the limit beyond which recipients of unemployment benefits may legally refuse offers of employment. Furthermore, beneficiaries may not be assigned to perform socially necessary work for an entity for which they have worked within the past 12 months, or to successive projects within the same entity. These contracts may be concluded for a maximum of 12 months, with or without renewal. The rules governing working hours, disciplinary matters and occupational safety and health that apply to the host entity's staff also apply to beneficiaries. Contracts may be terminated before their expiration date if, among other things, a beneficiary finds work or loses his or her entitlement to unemployment benefits or social insertion income. The host entity may terminate the contract in the event of fraud, uncertified absence or absence for more than 15 days, or misconduct.

14. For the performance of socially necessary work, unemployed recipients of an unemployment or social welfare benefit are entitled to a grant equivalent to 20 per cent of the social support index (IAS). Unemployed recipients of social insertion income and persons registered as unemployed for at least 12 months are entitled to a monthly grant equivalent to the IAS. The host entity covers some costs, such as transport and meals.

Violation of Convention No. 29

15. The FNSTFPS recalls that, under Article 1(1) of Convention No. 29, States parties are required to suppress the use of forced labour in all its forms. It stresses that Article 2(1) of the Convention defines "forced labour" as "all work or service which is exacted from any

[1] The regime governing these contracts is regulated by Decree-Law No. 128/2009 of 30 January 2009, as amended by Decree-Laws Nos 294/2010, 164/2011 and 20-B/2014.

person under the menace of any penalty and for which the said person has not offered himself voluntarily". The FNSTFPS examines the CEI in light of the three elements contained in this definition, namely: "work or service", "menace of a penalty" and "voluntary offer".

16. With regard to the notion of "work", the FNSTFPS invokes article 11 of the Labour Code, which defines the nature of an employment contract, and article 12, which lists a number of criteria for establishing the existence of such a contract. Article 2 and article 4(1) of the standard CEI and article 12 of the Labour Code mention the hours set by the host entity, the location where the work is performed and the obligation of beneficiaries to properly maintain equipment and other property provided to them. According to the FNSTFPS, there is no doubt that the CEI entail the performance of work.

17. With respect to the "menace of a penalty", the complainant organization notes that, in selecting CEI and CEI+ beneficiaries from the aforementioned group, the IEFP gives priority to some categories: the long-term unemployed, persons with disabilities, unemployed persons of 45 years of age and over, former prisoners. With few exceptions, persons in these categories may not refuse to perform socially necessary work. Furthermore, Decree-Law No. 220/2006, establishing the legal framework for the payment of benefits to unemployed persons, states that recipients must accept socially necessary work and any other active employment measures that match their profile for as long as they receive unemployment benefits. Any unjustified refusal to perform socially necessary work, any suspension or any dismissal will result in the cancellation of any current social and other benefits or allowances.

18. With regard to "voluntary offer", according to the FNSTFPS, while the consent of unemployed persons who sign an employment insertion contract is freely given, the role of external constraint or indirect coercion and the State's responsibility in that respect must be assessed. Constraint or indirect coercion may result from action taken by the authorities or from situations in which individuals must accept whatever work is available in order to support themselves. This last factor, together with the legislation under which unemployed persons may be required to perform socially necessary work which they are obliged to accept in order to avoid losing benefits under the social security system, are elements that can only be viewed as constraints or as a form of coercion. In that connection, the complainant organization underscores that the ILO supervisory bodies have ruled that governments "might be held responsible for organizing or exacerbating economic constraints if the number of people hired by the government at excessively low rates of pay and the quantity of work done by such employees had a knock-on effect on the situation of other people, causing them to lose their normal jobs and face identical economic constraints". The FNSTFPS maintains that, through a series of public service budget cuts and its programme for reducing the number of public servants, the Government has created a staff shortage in the public administration and left workers unemployed. It considers that, in order to deal with the staffing gap, the Government has placed unemployed workers through the employment insertion scheme, even though they perform tasks inherent in an actual employment contract. These workers have no alternative and must accept these working conditions, which are not in conformity with their rights, in order to support themselves and not lose their social benefits.

19. Moreover, under Convention No. 29, workers must have freedom of choice in their employment throughout the employment relationship. In this case there is no such freedom since, by law, workers are unable to terminate the employment relationship since they lose their social benefits if they refuse to work.

Violation of Convention No. 111

20. The complainant organization refers to Article 2 of Convention No. 111, under which the Government is required to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. It also refers to the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), which specifies that this policy should have regard to a number of principles, one of which establishes that all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of, among other things: security of tenure of employment; remuneration for work of equal value; conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment (Part II, Paragraph 2(b)(iv), (v) and (vi)).

21. The FNSTFPS states that, while the law stipulates that work performed under the CEI must not be used to fill existing positions, the beneficiaries are being used to compensate for staffing gaps in the public and private sectors and carry out the same tasks and activities as other workers on the staff of the host entities. This type of labour is most often used by schools, social security services, local authorities and the health and cultural sectors.

22. The complainant organization underscores that some beneficiaries, including in the education and health sectors, are assigned to perform relatively complex tasks without receiving adequate prior training. At the end of their 12-month contracts they are replaced by other beneficiaries under another employment insertion contract, leaving them in a precarious situation and without security of tenure. Furthermore, the experience that they gained during the 12 months of their contract is not taken into account, since the employment relationship is automatically terminated at the end of this period. Although beneficiaries perform the same tasks with the same working hours as staff employed by the host entity, they do not receive the same wage, are not entitled to annual paid leave or to training, and do not enjoy trade union rights. The FNSTFPS provides a table comparing the rights conferred by a public service contract (open-ended or fixed-term contract) and those under an employment insertion contract. The table shows that the beneficiaries of an employment insertion contract are not entitled to health benefits, parental leave, vacation and end-of-year bonuses and that time worked is not taken into account for the calculation of their old-age pension.

23. The FNSTFPS considers that the CEI are being used for purposes other than those envisaged therein, in violation of workers' right to payment that reflects the quantity, nature and quality of their work and the principle of "equal pay for equal work". Moreover, these contracts are contrary to Recommendation No. 111, which states that access to paid employment is ensured in so far as everyone has the right to apply for a position without any form of discrimination (specifically, on grounds of unemployment or receipt of social benefits). Since, as demonstrated above, CEI beneficiaries are workers, they should receive equal treatment, which, under Part II, Paragraph 2(b)(iv), (v) and (vi) of the Recommendation, includes advancement, security of tenure in employment, remuneration and conditions of work.

24. In view of the foregoing, the complainant organization requests the ILO to intervene by requiring Portugal to comply with Articles 1(1) and 25 of Convention No. 29; Article 2 of Convention No. 111; and Part II, Paragraph 2(b)(iv), (v) and (vi) of Recommendation No. 111.

25. Furthermore, the FNSTFPS indicates in its supplementary communication that there has been no negotiation regarding the implementation of the CEI and CEI+ programmes, and that they have not been the subject of any tripartite agreement with the social partners.

B. The Government's reply

26. In a communication dated 23 March 2015, the Government emphasized that the CEI are measures that seek to provide resources to recipients of unemployment benefits by having them carry out socially necessary activities of a temporary nature that are suited to their abilities in the absence of opportunities for immediate employment or vocational training. The CEI+ target recipients of social insertion income. Since 2014, the CEI+ programme has been extended to include other unemployed persons who do not receive any social benefit and are at a disadvantage on the labour market, including those who have been registered with the IEFP for at least 12 months. The scope of this measure was expanded in the context of the sharp rise in Portugal's unemployment rate in 2011 and 2013, as a result of which many of the long-term unemployed no longer receive unemployment benefits.

27. The activities carried out under the CEI and CEI+ are temporary and socially necessary. They are not production-related and are not intended to fill existing positions. They are carried out within the framework of projects organized to benefit the community, with priority given to social assistance and preservation of the natural, cultural and urban heritage. Priority is also given to projects that include prior vocational training for beneficiaries.

28. The Government stresses that the beneficiaries of these contracts are not relieved of their obligations to the IEFP; they must accept offers of employment or vocational training that are compatible with their profile and are given a number of hours (four days per month) to pursue an active job search.

29. The CEI and CEI+ give the unemployed additional experience and skills and make them more employable and able to enter the job market. In the case of the most vulnerable among them, these contracts also break the cycle of social isolation, thus facilitating their future employment. Moreover, they provide beneficiaries with additional income through a supplementary allocation of €83.84. While the CEI and CEI+ were introduced in 2009, a number of previous measures, some dating from the 1980s, had had the same goal, namely, to offer a temporary solution to the most vulnerable of the unemployed until they found new jobs. This goal has also been endorsed by the majority of the social partners. In this regard, the Government specifies that in 2008 the Government and the social partners concluded a "Tripartite agreement for a new system of regulation of labour relations, employment policies and social protection in Portugal". The measures for the adaptation of employment policies mentioned in the agreement include the creation of an "employment insertion contract" promoting the temporary insertion of beneficiaries of social insertion income in activities of a social nature (measure 5.49). Following this agreement, Decree No. 128/2009 of 30 January was adopted, regulating the CEI and the CEI+.

Reply to the allegations concerning violation of Convention No. 29

30. The Government replies to the FNSTFPS claim that Portugal has violated Convention No. 29 because the CEI and CEI+ correspond to the definition of "forced labour" contained in Article 2(1) thereof. In response to the argument that activities carried out under a CEI do, in fact, constitute work, the Government recalls that the purpose of these contracts, according to the legislation governing them, is not to fill existing positions or ensure the performance of production-related tasks on the labour market. The contracts give rise not to an employment relationship, but rather to one of social inclusion. In that regard, the

Government states that it decided not to pursue a legislative initiative that would have expanded these measures to include the private sector; in its view, it would be dangerous to allow for-profit entities to conclude such contracts owing, among other things, to the difficulty of monitoring their implementation. [2] This demonstrates the Government's commitment to the initial goal of these measures, namely, to facilitate the integration of people facing particular problems with regard to social inclusion and employment, and to ensure that the performance of socially necessary work does not turn into the occupation of positions.

31. The Government underscores that the relationship between the host entity and the beneficiary is governed by an insertion contract to which the rules established under Decree No. 128/2009 apply. In particular, beneficiaries are entitled to claim a supplementary allocation, food allowances and transport costs. The host entity is required, among other things, to take out insurance covering the risks to beneficiaries of exercising the professional activity. Article 9 of the Decree stipulates that the rules on working hours, daily and weekly rest, public holidays, misconduct and occupational health and safety that apply to the host entity's staff (in this case the General Public Service Labour Act for beneficiaries assigned to a public body) also apply to the beneficiary. However, these standards are applied with the necessary adaptations inherent in the nature of the relationship, which is not an employment relationship. Beneficiaries are not entitled to paid annual leave but may take up to 30 days off work.

32. The Government adds that the fact that socially necessary work is carried out according to a schedule and on the premises of the host entity does not in itself suffice to establish the existence of an employment relationship within the meaning of the Labour Code. Accordingly, the host entity has no disciplinary power over the beneficiary, given that it is not an employment relationship. However, the host entity is required to direct and supervise the activity performed and may terminate the contract for failure to follow the rules set out in Decree-Law No. 128/2009. [3] In such cases, the IEFP is responsible for assessing the situation and, if necessary, determining the consequences for the two parties. Furthermore, beneficiaries may not be required to carry out night-shift work even where the host entity's workers are required to do so. Lastly, beneficiaries are required to seek work actively during a period equivalent to four days per month, an obligation that takes precedence over the performance of socially necessary work.

33. The Government goes on to mention two other elements of the definition of "forced labour": the voluntary offer of work and the menace of a penalty, which may take the form of a "loss of rights or privileges". The Government recalls, as does the FNSTFPS (paragraph 13 above), that Decree-Law No. 128/2009 establishes that, under certain circumstances, beneficiaries may refuse to perform socially necessary work (where it is not suited to their physical abilities, qualifications or work experience). Refusal for any other reason would be considered unjustified. The acceptance of socially necessary work constitutes an inherent obligation for recipients of unemployment benefits or social insertion income, which constitute temporary income replacement. Failure to fulfil this obligation has consequences, including the cancellation of registration with the employment centre and thus of the benefits received. Beneficiaries may appeal a decision to cancel their registration before an Appeals Commission, which lies outside the hierarchy of the IEFP.

[2] The Government attaches to its communication the final report of the Tripartite Commission for Assessment of the Conditions for Expansion of the Employment Insertion Contract and Employment Insertion+ Contract Measures.

[3] Decree-Law No. 128/2009 of 30 January 2009, which regulates the CEI and CEI+; see footnote 1 supra.

34. Appeals against decisions to cancel registration and suspend benefits for refusal or abandonment of socially necessary work accounted for 3.1 per cent (211 out of 6,678) of the appeals received by the Commission in 2013. The Government considers that the small percentage of appeals against the loss of unemployment benefits demonstrates that there is a high degree of acceptance of socially necessary work, which precludes the existence of coercion in the "voluntary offer" and thus of forced labour within the meaning of Article 2(1) of Convention No. 29. The Government adds that the inalienable right of workers to freedom of choice in their employment is not in question since, on the one hand, the CEI increase employability rather than establishing an employment relationship and, on the other, the beneficiaries have the right and the duty to devote part of their time to an active job search. Furthermore, "employment integration" measures terminate when the beneficiary finds suitable employment or vocational training; they are simply the last resort among active employment measures. Thus, contrary to the allegations made by the FNSTFPS, there is no general obligation to work.

Reply to the allegations concerning violation of Convention No. 111

35. With regard to the obligation arising from Article 2 of Convention No. 111, whereby the Government must declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof, the Government recalls the principal objectives of the CEI. In the context of a crisis during which the number of unemployed persons has increased exponentially, the number of beneficiaries of these contracts has remained relatively stable; thus, there is no direct relationship between the number of contracts and the measures taken to reduce the number of public servants.

36. In drawing up their personal employment plans, the unemployed themselves express the desire to benefit from this type of measure, which they view as one stage on their path towards employment. The Government provides statistics showing the positive impact on the employability of unemployed persons who received CEI or CEI+; of the 22,008 people whose CEI expired in 2014, 14.2 per cent found work within one month, 21 per cent within three months, 27 per cent within six months and 31.6 per cent within nine months. [4] The Government also provides annual statistics on the number of unemployed beneficiaries of such contracts: there were 50,000 beneficiaries in 2009. This figure decreased slightly in 2011 and 2012 (approximately 42,000) and increased again from 2013, rising to 56,455 in 2014. Beneficiaries work for the central Government, local authorities and social institutions. There has been little change in the number of central Government contracts over the years (approximately 10,000 offered). The majority of beneficiaries are placed with local authorities; the number of such placements rose considerably in 2013 and 2014 (31,495) as a result of the worsening economic situation and the need to meet temporary social or community needs and strengthen community relations. The latter goal was, moreover, the core idea underlying the creation of employment insertion measures, as seen from the definition of "socially necessary work".

37. In June 2012, a university study assessed the impact of the active employment and training measures available in Portugal between 2004 and 2011 on the employability of the unemployed participants. The study showed that the "employment measures", including the CEI, had had a positive impact on unemployed persons by making them more employable,

[4] In the case of the CEI+, the percentages are slightly lower: out of 4,869 people whose CEI+ expired in 2013, 11 per cent found work within one month, 15.7 per cent within three months, 18.8 per cent within six months and 20.1 per cent within nine months.

albeit to a lesser extent than other measures such as professional internships. Furthermore, over 80 per cent of the beneficiaries of these employment measures viewed their participation as a positive experience, emphasizing the strengthening of their interpersonal skills and the working hours.

III. The Committee's conclusions

38. Since the complainant organization's allegations refer to the application of two Conventions on different subjects – forced labour and equality of treatment – that Portugal has ratified, the Committee will examine first the application of Convention No. 29 and then that of Convention No. 111.

1. Convention No. 29

39. The Committee notes that the FNSTFPS considers that the socially necessary work which unemployed persons are required to perform under a CEI or CEI+ in order not to lose their unemployment benefits or social insertion income amounts to forced or compulsory labour within the meaning of Article 2(1) of Convention No. 29. The Committee observes that the Government, for its part, maintains that socially necessary work does not undermine the inalienable right of workers to freely choose their employment since employment insertion contracts (CEI and CEI+) do not establish an employment relationship; rather, they are a means of facilitating unemployed persons' access to the job market by making them more employable and, in some cases, ending their isolation from society.

40. In that context, the Committee will first consider whether the socially necessary work that unemployed persons are required to perform under the employment insertion contracts falls within the definition of "forced labour" established in Article 2(1) of the Convention.

41. As the complainant organization and the Government indicate, it is clear from the definition of "forced labour" set out in Article 2(1) of the Convention that in order for a practice to constitute forced labour, three elements must be present: work or service must be performed, the menace of a penalty must exist and the person must not have offered himself for work voluntarily.

42. The first element refers to the performance of "work or service". The Committee observes that both the complainant organization and the Government state that in performing socially necessary work, unemployed persons engage in activities designed to meet temporary social or community needs. [5] The complainant organization considers that socially necessary work under CEI is equivalent to an employment relationship within the meaning of the Labour Code. The Government, for its part, maintains that the relationship arising from these contracts constitutes not an employment relationship, but one of social inclusion. It adds that the activities carried out are not productive tasks and are not intended to fill an existing position. The Committee considers that this matter should be analysed from the perspective of the particular nature of the "socially necessary work" performed in the framework of employment insertion contracts. The Committee notes that beneficiaries do not hold posts and do not sign employment contracts but insertion contracts. Accordingly, labour legislation (the General Public Service Labour Act or the Labour Code) is only partially applicable to the activity performed due to the adaptations required by the nature of the activities and of the status of those performing them, in other words unemployed jobseekers.

[5] Decree-Law No. 128/2009, art. 2.

43. The Committee also considers that it is important to appreciate the purpose of employment insertion contracts and the performance of socially necessary work by unemployed persons. The Committee observes that this is a social inclusion measure seeking to avoid jobseekers remaining inactive and thereby losing their skills, status in society and self-respect. The primary aim appears to be to maintain or develop the work skills of unemployed people and, when the time comes, to help them find a productive and freely chosen job on the job market. Moreover, the long-term unemployed, persons with disabilities, persons of 45 years of age and over and former prisoners must be given priority when allocating employment insertion contracts.

44. In this context, the Committee considers that the socially necessary work carried out by unemployed people under employment insertion contracts, in view of their nature and purpose, cannot be equated with forms of forced or compulsory labour, which the Convention seeks to eliminate.

45. However, the Committee observes that domestic law requires the recipients of unemployment benefits or social welfare benefits (Decree-Law No. 220/2006) to accept socially necessary work offered to them by employment centres, or forfeit their right to unemployment benefits. There is therefore a legal constraint to accept socially necessary work, which is recognized by both the Government and by the complainant organization. In this regard, the Committee observes that while socially necessary work constitutes an obligatory social inclusion measure, the legislation provides for the possibility, in certain limited situations, of refusing socially necessary work where the work is not suited to an individual's physical abilities, skills or work experience or when a certain journey time is exceeded (Decree No. 128/2009, art. 7).

46. The Committee recalls that the purpose of unemployment insurance schemes is to provide those who have lost their jobs with income replacement during a specified period of time so that they can seek suitable employment. In that regard, the Committee notes that the legislation reviewed gives the same weight to the obligation of the recipients of unemployment benefits to accept suitable work and their obligation to accept socially necessary work. An unjustified refusal to accept socially necessary work incurs the same consequences as an unjustified refusal to accept suitable work, in other words cancellation of registration with the employment centres and therefore cessation of the right to unemployment benefits. The Committee considers that it is therefore appropriate to invite the Government to enter into tripartite consultations with the social partners concerned with a view to evaluating all the terms and conditions for the implementation of CEI, their effectiveness and their impact. The Committee moreover considers that emphasis should be placed on decentralized social dialogue focused on concrete measures for the organization of socially necessary work.

2. Convention No. 111

47. The Committee notes that the complainant organization refers to Article 2 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which reads as follows:

Article 2

> Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

48. The complainant organization also invokes Part II, Paragraph 2(b)(iv), (v) and (vi) of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), which reads as follows:

> Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:
>
> …
>
> (b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of –
>
> …
>
> (iv) security of tenure of employment;
>
> (v) remuneration for work of equal value;
>
> (vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
>
> …

49. The Committee notes that the organization draws attention to the different treatment accorded, on the one hand, to CEI and CEI+ beneficiaries and, on the other, to the staff of host entities, which would be contrary to the national equality policy envisaged in Article 2 of the Convention. In that regard, the Committee observes that the national equality policy purports to eliminate discrimination on the grounds listed in Article 1(1)(a) of Convention No. 111, namely, race, colour, sex, religion, political opinion, national extraction or social origin. Article 1(1)(b) allows States that have ratified the Convention to specify other forms of discrimination after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies. In that regard, the Committee notes that the complainant organization has not identified any grounds for discrimination, within the meaning of the Convention, on the basis of which discrimination is alleged to have occurred. The Committee can only conclude that there is no evidence of discrimination that would have an impact on equality of opportunity between, on the one hand, CEI and CEI+ beneficiaries and, on the other, public servants under Convention No. 111. Furthermore, within the framework of the social dialogue with the social partners referred to in paragraph 46 above, the Committee requests the parties to ensure that, in practice, the activities performed under employment insertion contracts are not those assigned to vacant positions, as provided under Decree No. 128/2009.

IV. The Committee's recommendations

50. ***In light of the conclusions set out in paragraphs 38–49 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:***

(a) approve the present report;

(b) invite the Government to initiate tripartite consultations with the social partners concerned with a view to evaluating all the terms and conditions for the implementation of CEI, taking into consideration the developments contained in paragraphs 46 and 49;

(c) invite the Government to provide information in this regard for examination by the Committee of Experts on the Application of Conventions and Recommendations;

(d) make the report publicly available and declare closed the procedure initiated by the representation.

Geneva, 3 June 2016 *(Signed)* R. Margiotta

G. Pineau

B. Thibault