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Tenth sitting, 12 June 2021, 1 p.m.**Dixième séance, 12 juin 2021, 13 heures****Décima sesión, 12 de junio de 2021, 13 horas**

Chairperson: Ms Mvondo

Présidente: M^{me} Mvondo

Presidenta: Sra. Mvondo

Work of the Committee*PV.6 and PV.7 are adopted, as amended.***Travaux de la commission***La commission a adopté le PV.6 et le PV.7, tels qu'amendés.***Trabajos de la Comisión***Se adoptaron las actas 6 y 7, en su tenor modificado.*

Présidente – Notre séance, comme annoncé dans le programme de travail de notre commission, sera consacrée cet après-midi à l'examen de deux cas individuels. Il s'agit du cas du Kazakhstan, concernant la convention (n° 87) sur la liberté syndicale et la

protection du droit syndical, 1948; et du cas de l'Iraq, pour la convention (n° 111) concernant la discrimination (emploi et profession), 1958.

Avant de donner la parole au représentant gouvernemental du Kazakhstan, et pour que nos discussions puissent se dérouler dans les meilleures conditions possibles, je vous invite à bien vouloir envoyer la copie de vos discours à: standardsinterpret@ilo.org.

En outre, je vous précise que, s'il vous plaît, lorsque vous prenez la parole, il est important de veiller à ce que la langue dans laquelle vous vous exprimez coïncide avec la langue dans laquelle vous écoutez les débats, ceci afin d'éviter les interférences et la mauvaise qualité du son. Merci de votre bienveillante compréhension.

S'agissant du cas individuel que nous allons examiner, j'aimerais vous rappeler que le gouvernement du Kazakhstan, en prélude à l'examen de ce cas, a envoyé des informations écrites qui se trouvent dans la section «Discussion des cas individuels» de la page Web de la commission.

Compte tenu du nombre d'orateurs inscrits pour la discussion du cas du Kazakhstan, et comme prévu dans les méthodes de travail, le bureau de la commission a décidé de réduire les temps de parole à deux minutes pour tous les délégués intervenant à titre individuel. Je vous prierais à nouveau de bien vouloir respecter le temps de parole qui vous est attribué et qui, comme toujours, sera affiché à l'écran.

Discussion of individual cases (cont.)
Discussion des cas individuels (suite)
Discusión de los casos individuales (cont.)

Kazakhstan (ratification: 2000)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Interpretation from Russian: **Government representative (Mr SARBASSOV)** – In 2019, at the 108th Session of the Conference, we have informed this Committee about the implementation of a road map which was developed as the outcome of a visit by an ILO high-level mission to Kazakhstan. In the last two years, we have completed all activities provided for in that road map. That means that we have carried out an analysis of the way in which the trade union law is applied in Kazakhstan, in consultation with trade unions at all levels (including unions at the national, sectoral and territorial levels). We have also worked out recommendations to improve the procedures on the basis of which employers' and workers' organizations are able to operate and receive aid from international employers' and workers' organizations abroad.

Consultations have been held with trade unions at the national level and representatives of the Ministry of Justice regarding the issue of registration of trade unions. As a result of the work referred to above, the Law on amendments and additions to some legislative acts of the Republic of Kazakhstan on labour issues was adopted in May 2020. By virtue of this law and in order to implement Convention No. 87, the Labour Code, the Criminal Code, the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs (NCE) and the Law on Public Associations were amended. Regarding the Law on Trade Unions, the mandatory affiliation by lower level trade unions to the higher level trade unions has been repealed (sections 12, 13 and 14 of the Law); this trade union can autonomously decide on their trade union affiliation and membership. Secondly,

provisions regarding international cooperation with trade unions have been included in the law. As a result of that change, trade unions can affiliate to international trade union organizations and organize and conduct activities together with international trade union confederations. Thirdly, the procedure of confirmation of status at the branch, national and territorial levels, unions has been simplified. The requirement to have half the workers in a branch or in an enterprise to actually be registered as an operating trade union has been repealed. Fourthly, the rules for registration of trade unions have been simplified. Now, in order to fulfill the requirements for the minimum number of affiliated organizations in a certain territory, in addition to the affiliated organizations, structural subdivisions (branches, representative offices) of this trade union will be taken into account. At the same time, in 2020, new rules for the provision of public services in the field of state registration of legal entities and registration of branches and representative offices were approved, where the period of state registration was reduced from 10 to 5 working days. The time for unions to confirm their status has been extended from six months to a year following their registration. In case of non-compliance with the deadline set for the confirmation of their status, the procedure of a dissolution has been replaced by a suspension of trade union activity from three to six months.

We have made changes to the Labour Code and the Law on the NCE so as to repeal the role of the NCE as an employer representative in social dialogue. A separate provision of the Code provides for the rights of employers' organizations. In addition, the grounds for recognizing strikes as illegal set forth by the Labour Code were revised, and strikes at hazardous production facilities are now allowed, provided that the uninterrupted operation of the main equipment and mechanisms was ensured. In organizations providing service ensuring livelihood of the population, strikes are carried out if the

volume of relevant necessary services for the population is preserved, that is, without causing harm to the entire population of the relevant area.

Under the amended Criminal Code, calling for an illegal strike is now no longer a criminal offence. We have also lowered the amount of the fine which may be imposed for infringing the law. Deprivation of freedom and imprisonment, they were there before, those sentences have now been replaced by other forms of sanction.

Currently, there are three national trade union organizations in Kazakhstan, 53 branch level trade unions, 34 territorial trade unions and 357 local trade unions bringing together approximately 3 million workers. When these changes started to be brought into our legislation last year, we had new trade unions set up: 1 branch trade union, 25 local and 6 affiliates of branch level trade unions. So, you can see the law is operating, the unions are operating, and we do not feel that there are any problems with Kazakhstan's law or practice in respect to the Convention.

In addition, on 12 March 2021, we, and our social partners, signed a new General Agreement for 2021–23 between the Government of the Republic of Kazakhstan, the national trade union organizations and the national employers' organizations. The Agreement contains provisions obliging the parties not to interfere in each others affairs and activities.

I would also like to say that Kazakhstan is the only country in Central Asia where all three national trade union centres are signatories of the General Agreement. This underlines that there is an active cooperation between the unions.

As to practical assistance in undergoing registration procedures, there is a working group in the Ministry of Labour which includes officials from the Justice Ministry, as well as representatives of trade unions, including the Federation of Trade Unions of Kazakhstan, the Kazakhstan Labour Confederation and "Amanat" Trade Union, to offer

practical assistance with registration. I would like to assure you that the Government of Kazakhstan is planning to do further work in order to ensure that its labour legislation is fully in compliance with international labour standards and guarantees protection of the work of unions and employers' organizations in Kazakhstan, thus promoting social dialogue.

Our President, Mr Tokayev, on 9 June this year, signed a Decree on further measures to be taken by the Republic of Kazakhstan in the area of human rights. In accordance with that, the Government of our country will be developing a plan of human rights-related measures which will affect several key areas of the world of work.

They will touch upon, inter alia, freedom of association, the freedom of expression, the right to integrity of life, the rights of victims of trafficking in persons; human rights of citizens with disabilities; the rights of women, the eradication of discrimination and, at the same time, it is aimed at improving work between the Government and NGOs, making the legal system more effective and preventing torture. It will seek to improve Kazakhstan's cooperation with various international organizations, including the UN Council on Human Rights. As part of this plan, we will be working to improve our legislation further, including the legislation which governs the operation of trade unions in Kazakhstan, simplifying the procedures for them to have members affiliate, to work to sort out labour disputes, and to operate in general.

This will be part of Kazakhstan's approach to overhauling and modernizing its legal system, and the state apparatus in general.

In conclusion, I would like to request the International Labour Organization to note the measures we have taken, and to support us in our plans outlined above by providing further technical consultations.

Membres travailleurs – Le cas du Kazakhstan est un cas récurrent au sein de notre commission. Nous avons en effet abordé ce cas à quatre reprises dans le passé en devant à chaque fois regretter les graves violations de la convention n° 87 dans le pays.

Nous abordons une nouvelle fois ce cas en devant dresser le même constat que celui des examens précédents au sein de notre commission. Si les modifications légales intervenues pour répondre aux recommandations formulées dans le passé constituent un premier pas dans la bonne direction, le chemin vers une pleine conformité de la législation kazakhe à la convention n° 87 est encore long. En effet, d'autres pans de la législation kazakhe n'ont pas été modifiés alors qu'ils ont également un impact sur l'exercice de la liberté syndicale.

Plus long encore que le chemin vers la conformité du cadre légal kazakhstani avec la convention n° 87, c'est le chemin que devra encore parcourir le Kazakhstan pour garantir l'application effective en pratique de la convention dans le pays. En effet, si des modifications sur le plan légal ont été introduites, on n'en aperçoit pas concrètement les effets en pratique puisque les difficultés restent les mêmes.

Comme le reflètent les observations de la commission d'experts, de nombreuses organisations syndicales éprouvent encore de nombreuses difficultés à obtenir leur enregistrement. En rappelant que cet enregistrement ne devrait être qu'une simple formalité, nous devons regretter que ces procédures d'enregistrement soient opportunément utilisées pour entraver le processus de création ou le bon fonctionnement des organisations syndicales libres et indépendantes, en contravention à la convention n° 87.

Après plusieurs tentatives, les membres du KNPRK ont même tenté d'enregistrer leur organisation sous le nom de «Congrès des syndicats libres», mais cela leur a encore une fois été refusé.

Le Syndicat industriel des employés du secteur des combustibles et de l'énergie est quant à lui actuellement sous le coup d'une décision de suspension de six mois encore en cours prononcée le 5 février 2021 et connaît également un processus de dissolution.

L'explication du gouvernement selon laquelle les organisations syndicales n'ont pas besoin d'enregistrement pour exister n'est pas satisfaisante dans la mesure où les obstacles auxquels elles sont confrontées en l'absence d'enregistrement les empêchent en pratique de pouvoir fonctionner effectivement en tant qu'organisation syndicale.

Il conviendra que le Kazakhstan poursuive son travail en concertation avec les partenaires sociaux, en ce compris les partenaires sociaux indépendants, pour garantir l'impartialité et l'indépendance de ces procédures d'enregistrement qui sont encore aujourd'hui trop souvent utilisées politiquement pour décourager la poursuite ou la création d'organisations syndicales indépendantes.

Par ailleurs, les pratiques de harcèlement judiciaire à l'encontre de leaders syndicaux est toujours à l'œuvre dans le pays. Deux exemples édifiants sont repris dans l'observation de la commission d'experts. Il s'agit des cas de M. Baltabay et de M^{me} Kharkova auxquels le groupe des travailleurs souhaite apporter tout son soutien. M. Baltabay et M^{me} Kharkova ont respectivement fait l'objet d'un emprisonnement et d'une restriction de liberté de mouvement.

M. Baltabay, leader du Syndicat industriel des employés du secteur des combustibles et de l'énergie actuellement en processus de dissolution, a entretemps été libéré mais est toujours à ce jour frappé d'une interdiction d'exercer toute activité publique, y compris des activités syndicales, et ce pendant les sept années à venir. Suite à cette condamnation, M. Baltabay a été contraint de démissionner de sa fonction. Nous exprimons le ferme espoir que la situation de M. Baltabay n'est pas la conséquence de

son témoignage lors de l'examen du cas du Kazakhstan devant notre commission en 2017.

Quant à M^{me} Kharkova, qui était présidente du KNPRK, elle est encore aujourd'hui frappée d'une restriction de sa liberté de mouvement pendant quatre années et d'une interdiction d'exercer toute fonction dans une organisation publique ou non gouvernementale pendant cinq ans, prononcées en juillet 2017.

Nous rappelons également que d'autres syndicalistes font encore aujourd'hui l'objet d'une interdiction d'exercer toute fonction dans une organisation publique ou non gouvernementale par mesure de représailles pour leurs activités syndicales. Il s'agit de MM. Eleusinov et Kushakbaev, pour lesquels nous réitérons notre plein soutien.

Il s'agit clairement de tentatives manifestes d'empêcher toute possibilité pour eux de s'engager dans des activités syndicales à l'avenir et cela s'inscrit dans le cadre d'une volonté concertée de porter atteinte à l'existence de leur mouvement syndical. Ces pratiques de harcèlement judiciaire constituent de graves violations de la convention n° 87 et doivent immédiatement cesser et les peines prononcées à l'encontre de ces syndicalistes doivent être annulées.

À côté du harcèlement judiciaire, les représentants syndicaux sont encore trop souvent victimes de violences dans l'exercice de leurs activités syndicales. Le rapport renvoie vers l'agression subie le 10 novembre 2018 par le président du syndicat des travailleurs du complexe pétrolier et énergétique de Chakhtinsk, M. Senyavsky. La violence à l'encontre de représentants syndicaux doit être condamnée avec la plus grande fermeté. Le Kazakhstan se doit de faire toute la lumière sur ces faits en recherchant activement les auteurs de ces faits, en les traduisant en justice et en leur appliquant des sanctions dissuasives.

En ce qui concerne la législation kazakhe, la commission d'experts relève que l'incitation à poursuivre une grève déclarée illégale par le tribunal est toujours passible d'une peine d'emprisonnement. Le gouvernement manifeste son intention de réduire ces peines. Il convient de rappeler qu'infliger des peines pour le simple fait d'appeler à une grève, même déclarée illégale par les tribunaux, ne devrait pas entraîner de peine ou de sanction. Prévoir de telles peines ou sanctions est contraire à la convention n° 87. Ces sanctions doivent être tout simplement abrogées.

Enfin, les organisations syndicales indépendantes au Kazakhstan ont toujours pu compter sur le soutien de la communauté syndicale internationale pour défendre l'exercice de leur liberté syndicale. Ce soutien est néanmoins fortement entravé par le gouvernement kazakhstani qui estime l'implication de ces acteurs internationaux comme une ingérence dans les affaires internes du pays. Si nous ne doutons pas des intentions louables de la proposition du gouvernement d'inclure la CSI sur la liste des organisations internationales autorisées à soutenir les syndicats nationaux, nous sommes surtout d'avis qu'une telle autorisation par les autorités ne devrait tout simplement pas être requise. Il s'agit en effet ici d'une énième entrave à l'exercice de la liberté syndicale consacrée par la convention n° 87.

Le Kazakhstan traîne derrière lui de très longues années de violations graves de la liberté syndicale et nous craignons que le rétablissement d'un environnement favorable à l'exercice effectif de cette liberté prendra encore de longues années. Malgré les modifications légales introduites au Kazakhstan, nous devons regretter de ne voir à ce jour aucun impact réel dans la pratique puisque le harcèlement judiciaire, les violences et les entraves à la constitution d'organisations syndicales par l'intermédiaire de la procédure d'enregistrement se poursuivent encore aujourd'hui.

Nous continuerons à suivre attentivement la situation au Kazakhstan et espérons que les intentions affichées par le gouvernement depuis de nombreuses années se traduiront un jour effectivement dans la pratique.

Employer members – The first case on our agenda today concerns the application in law and practice of Convention No. 87 in Kazakhstan. The Government of Kazakhstan ratified this Convention in 2000 and as the Worker members have explained the Committee of Experts has issued 12 observations in this case and the Committee on the Application of Standards has discussed this case four times, most recently in 2019.

From the outset, the Employers would like to express our gratitude to the Government representative for the comprehensive oral and written information shared with the Committee. We take note of the Committee of Experts' observations concerning the imprisonment of trade unionists and the alleged assaults of the Chairperson of the Trade Union of Workers in the Fuel and Energy Complex of Shakhtinsk. The Committee of Experts' observations requested the Government to provide information on the development of these cases.

The Employers take note of the written information provided by the Government on 13 May regarding the criminal cases involving these trade unionists and the Employers request the Government continue to provide information on the status of these cases, as requested.

In respect of the conclusions of the Committee on the Application of Standards made in 2019, the Employers' group would like to highlight five points raised by the Committee of Experts.

First is in respect of Article 2 of the Convention. The Employers note that the Committee of Experts requested the Government to provide information on the current status of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) and to

ensure that KNPRK and its affiliates enjoy full autonomy and the independence of a free, independent workers' organization without further delay. In addition, the Committee of Experts requested the Government to continue engaging with social partners on the issues concerning the registration process. We observe that the Government provided in its submission to the Committee on the Application of Standards on 13 May information on the registration of KSPRK and the suspension of the Sectoral Trade Union of Fuel and Energy Complex Employees (STUFECE). In light of this, the Employers must echo the Committee of Experts request to the Government to continue to provide information on the still unresolved status of KSPRK and the STUFECE, and to engage with the social partners on issues concerning barriers to registration of trade unions.

Second, the Employers note that the Committee of Experts previously requested the Government to amend specific sections on the Law of Trade Unions to ensure the right of workers to freely decide whether they wish to become members or associate with a higher-level association of trade unions. We are pleased to see that the Committee of Experts noted with satisfaction that sections 11–14 of the Law on Trade Unions were amended accordingly, as requested.

Turning now to the Law on the National Chamber of Entrepreneurs. The Employers note that the Committee of Experts previously urged the Government to amend the Law on the National Chamber of Entrepreneurs (NCE) and any other relevant legislation to ensure full autonomy and independence of free and independent employer organizations. The Government indicated in its written submissions to the Committee on the Application of Standards that the General Agreement for 2021–23 was signed by government national associations of employers and workers on 12 March 2021. The Employers thank the Government for finally amending section 148(5) of the Labour Code and section 9 of the Law on the National Chamber of Entrepreneurs, thus ensuring that

no longer the NCE, which has compulsory membership, but rather free and independent employers' organizations may represent employers in social dialogue at all levels. In this way, in line with Article 2 of the Convention, employers now have a choice to decide what organization should represent them in social dialogue efforts and related social and economic matters.

The Employers also noted with satisfaction that NKRRK, which is the most important employers' organization at national level, has been the signatory of the new General Agreement for 2021–23, and NKRRK representatives have been involved in social dialogue institutions at sectoral and regional levels. The Employers consider these developments as steps in the right direction and trust the free and independent employer organizations will continue to be able to represent the needs and interests of their members in all matters of relevance within their sphere of competence. The Employers, however, still have concerns as regards the potential impact that the procedure for accreditation with the NCE may have on the independence of employers' organizations and will keep this issue under close review. Therefore, the Employers request the Government to continue to further promote and facilitate the activities of independent employers' organizations in the country and provide information in this respect in its regular reports on the application of the Convention.

In addition, the Employers take note that the Committee of Experts had previously requested the Government to provide information on the status of its proposal to amend section 176(1)(1) of the Labour Code regarding the right to strike.

The Employers observed that the Committee of Experts also requested the Government to further review section 402 of the Criminal Code taking into account the above and the Committee of Experts requested the Government to provide information on developments. We are pleased to see that the Government indicated in its written

submissions to the Committee on the Application of Standards that amendments to section 402 of the Criminal Code have been adopted.

However, concerning the right to strike issue in the Committee of Experts' observations, the Employers would like to reiterate that the Convention does not contain rules regarding the right to strike to be regulated at national level. Therefore, in the Employers view, as well as in the view of some governments, the request of the Committee of Experts to the Government to amend the law regarding strike issues has no basis or foundation or place in the Convention. Therefore, in our view, the Government is not obliged to consider this request.

Finally, in respect of the right of organizations to receive financial assistance from international organizations of workers and employers, the Employers express appreciation at the amendment of section 6 of the Law on Trade Unions. We trust that the list in Ordinance No. 177 of 9 April 2018 will be extended to include international workers' and employers' organizations, such as the ITUC and IOE. The Employers request the Government to continue to provide information on the measures taken in respect of all of these issues.

Interpretation from Russian: **Worker member, Kazakhstan (Ms ZHUMAGELDIYEVA)** – We are the biggest workers' organization in Kazakhstan, and we include approximately 12 million trade union members from across the country.

In addition to our federation in the country, we have two national unions. The federation has always spoken in favour of solidarity among trade unions and has also supported solidarity campaigns among international trade union organizations.

We have appealed in favour of Larissa Kharkova, Amin Yeleusinov, Nurbek Kushakbayev, Dmitry Senyavsky, Yerlan Baltabay, to get their sentences lifted and to help deal with the issue of trade-union registration.

In the past, we have agreed with complaints sent by the ITUC to the International Labour Organization. We support the position of international trade union organizations, particularly in terms of requiring strict compliance with international labour Conventions by the Government of Kazakhstan, and is taking measures to bring its law and practice into line with Conventions.

At the union's initiative in Kazakhstan, proposals have been sent to the Labour Ministry concerning comments made by the ILO Committee of Experts in the past. On 4 May last year, the President of Kazakhstan signed off a new law on changes and additions to some legal provisions relating to labour issues.

The law now excludes the compulsory membership of unions in higher level union organizations, which means that the right of unions to operate freely is now guaranteed. Furthermore, conditions for confirming the status of unions as national, branch or regional, have been simplified. The requirements to have half the number of workers in a given branch to be recognized as a branch trade union has also been removed.

Turning to article 402 of the Criminal Code, which was mentioned by the Committee of Experts, this provision has not been removed entirely, but the provision has been rendered less strict.

Our Federation is preparing a package of proposals on further improvement of union and labour legislation in Kazakhstan, including on bringing in guarantees for unions' activity and the simplification of procedures to handle issues such as strikes and labour disputes. We always supported constructive dialogue with social partners, with national union organizations, and with others, on defending the interests and rights of individual workers and unions, and in promoting social justice and the principles of decent work.

This year, a new General Agreement, as you have heard, has been signed between the Government and the social partners. For the first time, national unions have worked out a joint consolidated approach to ensuring the protection of the labour and economic rights of workers and guaranteeing levels of wages. Our initiatives have been supported, as have what the social partners have done to prepare a road map on implementing the decent work Convention, promoting social partnership, and creating more decent work.

We continue to work with technical assistance from the ILO and from ACTRAV to improve our cooperation with the Organization, further ratification of international labour standards, and to provide better decent work to all people.

Government member, Portugal (Mr CLAUDINO DE OLIVEIRA) – I have the honour to speak on behalf of the European Union and its Member States. The candidate countries Turkey, the Republic of North Macedonia, Montenegro and Albania, the EFTA country, Norway, member of the European Economic Area, as well as the Republic of Moldova, align themselves with this statement.

The EU and its Member States are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights and the right to organize and the freedom of association.

We actively promote the universal ratification and implementation of fundamental international labour standards, including Convention No. 87. We support the ILO in its indispensable role to develop, promote and supervise the application of international labour standards and of fundamental Conventions in particular.

The EU-Kazakhstan relationship is governed by the Enhanced Partnership and Cooperation Agreement, which has enabled us to strengthen our bilateral cooperation. This Agreement includes commitments to effectively implement the fundamental ILO Conventions. While we acknowledge the progress made by the Government in

amending parts of its legislation, we are concerned that Kazakhstan has become a recurrent case at the Committee on the Application of Standards. Conformity with the Convention, both in law and in practice, is now discussed for the fourth time in the last five years. We encourage the Government to address the outstanding issues to fully comply with Convention No. 87.

Following the ILO high-level tripartite mission of May 2018 and the resulting road map, the EU and its Member States note with satisfaction the amendments, in May 2020, of several legislative acts, including the Law on Trade Unions, the Law on the National Chamber of Entrepreneurs and the Labour Code.

We urge the Government to repeal article 402 of the Criminal Code which criminalizes “calling on workers to participate in a strike that has been found illegal by a court”. This article is incompatible with the freedom of association, the right to organize its activities, including the right to strike, without interference of public authorities.

Beyond legislative amendments, we call on the Government to ensure that freedom of association, as well as the right to establish organizations without prior authorization and the right to organize, both in law and in practice, are respected.

We note the information submitted by the Government regarding the denials to register for the Congress of Free Trade Unions and the Industrial Union of Employees of the Fuel and Energy Sector, as requested by the Committee. We regret that both trade unions remain unregistered. We also regret the suspension of the operations of the Industrial Union of Employees of the Fuel and Energy Sector. We stress the importance of ensuring that independent trade unions are able to register and carry out their activity without interference and strongly encourage the Government to continue engaging with the social partners in addressing the issues concerning the registration and suspension processes.

We note that the Committee on Freedom of Association continues examining the cases of Mr Baltabay and Ms Kharkova and take note of the submission by the Government of written information on their cases, as well as on the case of Mr Senyavsky. The EU and its Member States deplore any violation of fundamental rights and any act of harassment, intimidation, assault or imprisonment against trade unionists.

The EU and its Member States will continue to follow and analyse the situation and remain committed to our close cooperation and partnership with Kazakhstan.

Interpretation from Russian: **Government member, Russian Federation (Mr SERGEEV)** – The Russian Federation fully supports the points made by the distinguished Minister of Labour of Kazakhstan on compliance by his country with ILO Convention No. 87.

We believe that criticism against Kazakhstan, on the grounds that it allegedly violates the provisions of this Convention, that criticism from the ILO, international union organizations and human rights bodies is unfounded. In May 2018, an ILO high-level mission visited Kazakhstan. As a result, a road map was adopted on the implementation of recommendations made by the Committee on the Application of Standards and the Committee of Experts concerning Convention No. 87. On the basis of this document, the Kazakhstan authorities did a lot of work to amend their national legislation. In May 2020, President Tokayev signed a law on changes and additions to certain legal provisions relating to labour in Kazakhstan. This was to further improve the legal governance of social and labour relations, including the activity of trade unions and the development of dialogue with trade unions at all levels of social partnership. Therefore, the national legislation has been brought fully into accordance with international labour standards and that, we hope, will be reflected in the report of this Committee on this case so that

consideration of the case is brought to an end. I would like to take this opportunity once again to call upon the ILO and all Members of the Organization, when looking at such cases, to stick strictly to the principles of neutrality and objectivity in not bringing issues which go beyond their purview and have nothing to do with the implementation of ILO labour Conventions.

Interpretation from Russian: **Worker member, Russian Federation**

(Mr KRAVCHENKO) – The delegation of Workers of the Russian Federation has not seen any real progress in this situation in respect to Convention No. 87, in Kazakhstan. The changes mentioned by the Government to their law, do not really change the situation in any substantive way. Leaders of independent trade unions have been found guilty of criminal offences, they may be in freedom at the moment thanks to the efforts of the ILO and the international community, but they are still considered criminals and they cannot engage in trade union activity. On the basis of the Trade Union Law, the Confederation of Independent Trade Unions of Kazakhstan, despite the fact that the reasons for refusal for registration are no longer in force, was dissolved legally and efforts to re-register the Confederation have been a failure. When the Confederation was dissolved, pressure was put on its activists and there are virtually no trade unions left now that were part of the Confederation.

Kazakhstan's Trade Union Law and its new wording looks at obligatory registration as legal entity for trade union organizations and the procedure for that is very complicated. Trade unions cannot set up in ways which are not provided for by law. They are limited in receiving financial assistance, they cannot have members from certain categories of workers, and they still have to comply with other provisions.

When an amendment was made to article 402 of the Criminal Code, it still made the calling of a strike an offence. Punishment for doing that is provided even when, in the

course of the strike, there have not been any serious violations of law and order. It seems therefore, that freedom of association continues to be violated in Kazakhstan. We urge the Committee to take real measures to ensure that proper substantive rather than cosmetic changes are made to law and practice in this respect in Kazakhstan.

Government member, India (Mr ARYAN) – India welcomes the delegation of the Government of Kazakhstan and thanks it for providing the latest update on the issue under consideration.

The delegation of India has gone through the findings of the Committee of Experts and the responses thereto, furnished by the Government of Kazakhstan.

India appreciates the commitment of the Government of Kazakhstan to fulfil its international labour obligations including those related to Convention No. 87 through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

India takes positive note of recent legislative amendments enacted by Kazakhstan to bring the national trade union legislation into conformity with the ILO standards.

India also notes with appreciation the signing of the General Agreement for 2021–23 by the Government and the social partners. We believe that this Agreement pertaining to the activities of national associations will provide due protection to them in conduct of their internal affairs. We also look forward to continued engagement of the Government of Kazakhstan with social partners in this regard.

We request the ILO and its constituents to fully support the Government of Kazakhstan and provide all necessary technical assistance that it may seek in fulfilling its labour-related obligations.

We take this opportunity to wish the Government of Kazakhstan all success in its future endeavours.

Worker member, Germany (Ms HOFMANN) – I speak on behalf of DGB, FNV and Nordic trade unions.

Over the last days some delegates said demanding respect for civil liberties falls outside the scope of Convention No. 87. The ILO's supervisory bodies have however, on numerous occasions emphasized that the rights under Convention No. 87 can only be exercised within a system that respects fundamental rights.

In Kazakhstan, workers, independent unions and their members face repression and systematic state obstruction in exercising their civil liberties in general and the right to organize in particular. The right to strike forms part of the right to organize as the ILO's supervisory bodies have rightly pointed out over decades.

Trust, cooperation and solidarity are essential but being able to use industrial action as a means of last resort is a crucial prerequisite for the negotiating power of a united workforce.

The Kazakhstani Labour Code and the Criminal Code still provide broad gateways for the infringement of the right to strike and the freedom of assembly.

In its written statement to the Committee on the Application of Standards, the Government indicates that the amended article 402 of the Criminal Code complies with Article 21 of the International Covenant on Civil and Political Rights and hence, the rights protected under Convention No. 87. According to the UN Human Rights Committee, any restrictions of Article 21 must be necessary and proportionate in a society based on democracy, the rule of law, political pluralism and human rights.

In 2016, the Committee has called on the Government to refrain from criminalizing public associations for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty. An assessment of the amended article 402 of the Criminal Code shows that nothing has changed since. As is the case with article 174 of the Criminal Code under which the incitement of social discord can be punished with imprisonment for two to seven years.

We therefore call on the Government to immediately bring its law not only in line with Convention No. 87, but also the international human rights Conventions Kazakhstan has ratified and hence pledged to respect, promote and fulfil.

Government member, Turkey (Mr EKINCI) – We thank the Government of Kazakhstan for the information it provided and welcome its willingness and commitment to constructively engage and cooperate with the ILO.

On 4 May 2020, legislative amendments were enacted to bring Kazakhstan's trade union legislation into conformity with ILO requirements and an inter-agency working group was established to ensure full and proper implementation of new legislation and address issues raised in the report of the Committee of Experts. We encourage the Government of Kazakhstan to continue to undertake necessary steps in this regard.

We commend the positive and significant steps, such as: the elimination of the principle of mandatory vertical association of trade unions; the introduction of the rules on the international cooperation for trade unions; the exclusion of the national chamber of entrepreneurs "Atameken" from the social partnership system; the mitigation of liability for calls to participate in illegal strikes; the clarification of the conditions for holding strikes at certain facilities (such as energy and heat supply, transportation, communications, healthcare); and the facilitation of the procedure for registration of trade unions taken by the Government and recent amendments made by the

Government with a view to the implementation of the road map as a result of the ILO mission in May 2018 and in order to bring their national legislation in accordance with standards of the Convention No. 87 should be acknowledged.

We welcome the fact that the Government expressed its willingness to continue engaging in social dialogue with the social partners. The Kazakhstani Government is determined to work on issues raised by the ILO and social partners in the spirit of constructive dialogue.

We believe that Kazakhstan will continue to work with the ILO and social partners in the spirit of constructive cooperation.

Worker member, United States of America (Mr GOTTWALD) – Unfortunately, since this body last discussed this case in 2019, the Government of Kazakhstan has continued its campaign to undermine independent trade-union activity. Since the Law on Trade Unions was adopted in 2014, local advocates estimate that at least 600 union bodies at different levels have lost their status in clear violation of their right to free association. This includes the Confederation of Independent Trade Unions of Kazakhstan, which has made at least three attempts to re-register since it was dissolved in March of 2017, all of which were denied.

In May 2020, the Government passed amendments to the Law that appear to address some of the concerns raised by the Committee of Experts. However, in practice, the campaign of state repression of independent trade unions continues unabated.

Since those amendments, global labour allies note only one successful registration of an independent union at the local level. Meanwhile, another branch trade union body was suspended as recently as February 2021.

Larissa Kharkova, the former Chair of the KNPRK, remains under modified house arrest, and Erlan Baltabay, Nurbek Kushakbayev and Amin Eleusinov, trade union leaders who were imprisoned for their work, are now banned from trade union activities.

The Government of Kazakhstan must fully implement the recommendations of the 2019 Committee, including ensuring that the KNPRK or its successor is registered, that registration procedures are not used to close out unions, and that charges and sentences against union leaders are dropped.

Government member, Azerbaijan (Mr MARDALIYEV) – My delegation thanks the delegation of Kazakhstan for providing the latest update on the application of Convention No. 87 to the Committee.

Azerbaijan appreciates the efforts and the progress made by the Government of Kazakhstan in fulfilling its obligations concerning this fundamental Convention, including the positive steps taken by the Government to implement the recommendations of the Committee of Experts.

We recognize that the Government of Kazakhstan has continued the important legislative and institutional reforms to ensure compliance with all its obligations under the Convention. Legislative amendments were introduced to bring Kazakhstan's trade union legislation in conformity with ILO requirements, as well as an inter-agency working group was established to address the issues raised in the report of the Committee of Experts.

These actions by the Government of Kazakhstan demonstrate its commitment and willingness to address the concerns raised on the basis of tripartite consultative process and with active engagement of ILO.

We encourage the Government of Kazakhstan to continue working closely with the ILO and increasing its efforts to implement ILO standards. At the same time, in fulfilling its labour-related obligations, we invite ILO to fully support the Government of Kazakhstan and provide any technical and consultative assistance that it may seek in this regard.

Government member, United States of America (Ms MORENO) – This Committee has discussed the Government of Kazakhstan's lack of progress to address serious issues of non-compliance with Convention No. 87 every year since 2015, except in 2018 when a high-level tripartite mission visited the country.

We welcome progress on recommendations to amend the Law on Trade Unions, the Labour Code, the Law on the NCE, the Criminal Code, the Code of Criminal Procedure, and the Law on Public Associations in May 2020.

However, significant work remains. In February 2021, a court ordered the Independent Industrial Trade Union of Fuel and Energy Workers (ITUFEW) to suspend operations for six months for allegedly failing to maintain the minimum number of sectoral branches as currently required under the trade union law.

We are encouraged by the Government's recent commitment to work with this union to remain operational, as this suspension would effectively dissolve the last remaining independent trade union in Kazakhstan.

We call on the Government to make good on its commitment to respect and promote worker rights under this Convention. To that end, we strongly urge the Government to ensure freedom of association in both law and practice. This requires:

- respect for the full autonomy and independence of free and independent trade unions by immediately ceasing acts of violence, harassment and interference;

- vacating the suspension order against the ITUFEW;
- immediate and full implementation of the recent amendments, as well as further amendments to restrictive provisions under the Law on Trade Unions, including the minimum branch requirement for sectoral unions under section 13(2);
- continued engagement with the social partners on issues concerning the registration process, including to re-register the KNPRK;
- eliminating practices and vacating existing orders that prohibit or impose restrictions on trade unionists and leaders from engaging in legitimate trade union activities; and
- further review of section 402 of the Criminal Code, in consultation with the social partners and the ILO, to ensure penalties for calling strike action are not excessive.

We urge the Government to take all necessary measures to address these long-standing issues and recommendations.

The United States remains committed to engaging with the Government to advance worker rights in Kazakhstan.

Government member, United Kingdom of Great Britain and Northern Ireland

(Ms HATIA) – I am speaking on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and Canada.

The UK and Canada support the role of the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular. We are committed to the promotion, protection and respect of human rights and labour rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments and to the ratification, effectiveness and implementation and enforcement of the core labour standards.

The UK and Canada support Kazakhstan in its economic and social reform ambitions. Through our close partnership, we seek to ensure that adherence to rule-based international system, good governance, rule of law and universal human rights are promoted and enhanced.

We are pleased to hear about the May 2020 amendments to the 2014 Law on Trade Unions, as well as the recent amendments to the Labour Code and the Law on the National Chamber of Entrepreneurs, to address many of the concerns raised by this Committee since 2015.

However, we also note the various and important concerns raised by the Committee of Experts, and note with regret its remarks on the lack of meaningful progress with regard to the obstacles to the establishment and registration of trade unions, and the continued interference with the freedom of association of employers' organizations. We also note the concerning downward trend with regards to the human rights situation in the country, including incidents of intimidation and harassment against trade unionists and restrictions on the right to peaceful assembly. We therefore urge and encourage the Government of Kazakhstan to: first, protect the right of all persons, including trade unionists, to express their opinions and engage in peaceful protest, both in law and practice; second, effectively address the current difficulties in the trade union registration process and ensure an enabling environment for trade union registration; third, continue to work to ensure that workers' and employers' organizations can function independently and autonomously, in line with the views of the Committee of Experts; and finally, continue to engage closely, openly and transparently with the ILO in the future.

The UK and Canada will continue to support the Government of Kazakhstan in this endeavour.

Interpretation from Russian: **Observer, International Trade Union Confederation**

(ITUC) (Mr KOSSHYGULOV) – I represent workers who set up the Congress of Free Trade Unions in Kazakhstan. We were dissolved in 2017 for allegedly not meeting the requirements of the Trade Union Organization. Despite clear recommendations from the ILO, the law, which contradicts Convention No. 87, is still being used in practice and many trade unions have been unable to re-register. They have effectively been legally dissolved, and that includes us and our member organizations. Union leaders were brought to trial on fabricated charges and four of them were convicted. The Government says there is no connection between the cases against Mr Eleusinov, Mr Kushakbaev, Ms Kharkova and Mr Baltabay. In fact there is, their sentence, and the fact that they are members of our union. They may be in freedom but they cannot engage in trade union activity. We have made efforts under the new law to register a new organization, the Congress of Free Trade Unions in Kazakhstan, but the Ministry of Justice has refused registration and says it considers the reason for registration not being allowed last time remains valid; the activity of unions in the petrochemical industry, which I heard was stopped at the beginning of this year. Legal proceedings are in hand to dissolve our affiliates. The whole process has been ridiculous. I was not even informed about it. Employers have pulled out of collective agreements and they no longer recognize our representatives. We urge the Government to firstly register the union; withdraw the legal procedure for dissolving it; to pardon the activists and leaders who have been sentenced; and to investigate and to call to account those who have abused their legal position. We only want to protect and represent the interests of our members in accordance with the Constitution and the principles of freedom of association. We are grateful to the ILO, to the ITUC and to other organizations for their support to us.

Observer, IndustriALL Global Union (Mr ÖZKAN) – This is a joint statement made on behalf of global union federations, IndustriALL, IUF, BWI and PSI representing workers in different sectors of the economy worldwide, including Kazakhstan.

Kazakhstan continues to avoid to fulfil its obligations under Conventions Nos 87 and 98.

The repressive Law on Trade Unions was adopted in 2014, after which the Confederation of Independent Trade Unions of Kazakhstan was dissolved. In 2017, Erlan Baltabay, head of the local trade union “Decent Work” for petrochemical industry workers attended the International Labour Conference and spoke about the union rights violations in his country. He was later trialled, imprisoned and fined. Up to date, the Kazakhstani Government continues to use stalling tactics to discourage and avoid the registration of new trade unions. With this, the Government has paralysed activities of all the unions belonging to the Independent Confederation, which causes many workers totally unprotected over their free union choice.

As we speak, pressure and intimidation against the Industrial Trade Union of Employees of the Fuel and Energy Sector union, which is the last remaining and functioning affiliated trade union of the Independent Confederation. State authorities continue to deny registration of the said union, alleging that it twice failed to submit relevant papers for registration in 2020. In fact, some employers have already started to take advantage of this state behaviour, refusing to deliver their obligations under the collective agreement in vigour.

Along with this, the repressive Criminal Code is systematically used in a way to prosecute rank and file members and activists who are faced with imprisonment and/or sizeable fines, for no other reason than performing their union tasks. At the same time, members and activists of independent unions are physically attacked. For example, a

trade union leader, Mr Dmitry Senyavsky, was brutally beaten in 2018 in the Karaganda Region by unidentified people.

Taking into consideration the total absence of improvement and the further deterioration of the workers' rights, and refusal to register new unions, we urge the Government to take the necessary action to make sure that Kazakhstan respect its international obligations.

Présidente – Nous sommes arrivés à la fin de la liste des orateurs inscrits pour ce cas. Je vais maintenant donner la parole à M. Sarbassov, vice-ministre, pour formuler ses remarques finales.

Interpretation from Russian: **Government representative (Mr SARBASSOV)** – I would like once again to express my thanks to everybody who has spoken in the course of the debate this afternoon, my government colleagues and the social partners for having made a contribution and spoken about what the Government of Kazakhstan has been doing. All the comments, all the recommendations, all the desiderata and all the good wishes expressed, will of course be taken into account when we plan our future work. I described that in my previous introductory statement.

I did mention that we have signed a new General Agreement, and that that included a commitment on the part of the Government and the social partners not to interfere in each other's activities in any way but to continue to work together in order to promote any infringements or violations of the rights of either employers or workers and their organizations.

In May this year, as I mentioned, we did set up a special expert working group that is going to be tripartite and most of the work we are going to do to overhaul and review the things we need to do to make sure we are in full compliance with our commitments towards the ILO, and its Conventions will be done there.

The working group will also take into account that the Government instructions that a plan be developed to deal with wider human rights issues as I mentioned earlier. Now, some people in the course of the debate, have referred to certain procedural issues. In accordance with national law, all unions can be set up and organized without prior authorization which is precisely what I believe Convention No. 87 stipulates.

Receiving state registration and a registration number is something that can be done fairly straightforwardly and through the legal system. The status of a union is then recognized once those procedures have been completed. In this connection, I would like to say that, yes, the working group that we have between the Ministry of Labour and the justice ministry is operational. It includes unions and its responsibilities include dealing with problematic issues.

In March this year, we already looked at the issue of the union to which several speakers have referred and recommendations have been made that the registration process be simplified. We are keeping an eye on this situation, we are monitoring this situation through the working group, and the work will continue from here on out.

Turning to the registration of the Congress of Free Trade Unions of Kazakhstan, we have repeatedly said that we are willing to proceed with registration of these unions, like other unions, but I think what has been said about the activity or actions of the legal system in Kazakhstan in this respect is rather beside the point and not particularly accurate either. Of course the labour ministry is the coordinating body for promoting social dialogue, we promoted it in the past and we shall continue to do so now and in the future and, as I said, we will also involve the expert working group to which I referred several times.

I would once again like to say that, as far as we are concerned, we will continue to work to improve our labour legislation. We will make it easier for unions to operate to

promote collective bargaining and to engage in the settlement of labour disputes. This work, which will be done by the Government together with our social partners, will we hope allow us to reach agreements and make sure that what we do is in step with our obligations towards the ILO.

Présidente – Monsieur le ministre, je vous remercie pour le temps que vous avez bien voulu accorder à la commission et pour toutes les informations que vous avez portées à notre attention.

Employer members – We have listened carefully to this discussion today. We would like to begin by thanking the Government for the written information and the detailed oral presentation provided to the Committee.

This has been very helpful for a deeper and up-to-date understanding of the situation in Kazakhstan. Based on the discussion, we invite the Government to continue to review developments in the cases of Mr Baltabay and Ms Kharkova.

The Employers also invite the Government to take appropriate measures to resolve the registration of KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

The Employers also invite the Government to continue to engage with social partners on issues concerning the registration of trade unions and those existing barriers.

The Employers also invite the Government to continue to facilitate and remove obstacles regarding the operation of free and independent employers' organizations in the country, and to do so without delay.

The Employers' group also invites the Government to consider extending the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations such as the ITUC and the IOE.

The Employers also request the Government to provide information on developments and the measures taken in its next regular report on Convention No. 87 under article 22 of the ILO Constitution.

Membres travailleurs – Nous remercions le représentant du gouvernement du Kazakhstan pour les informations qu'il a pu nous fournir au cours de la discussion et nous remercions également les intervenants pour leur contribution.

Nous l'avons dit, les modifications légales intervenues sont un premier pas dans la bonne direction. Mais ces modifications légales n'ont toutefois pas réglé tous les problèmes de conformité à la convention de la législation kazakhe puisque d'autres aspects légaux devraient être mis en conformité avec la convention pour pleinement garantir la liberté syndicale.

La législation kazakhe soumet notamment toujours la coopération des syndicats avec des organisations internationales à une autorisation préalable délivrée par l'ordonnance n° 177 du 9 avril 2018. Une telle pratique nous apparaît contraire à la convention et il conviendrait que le gouvernement prenne toutes les mesures, en droit comme en pratique, garantissant que les organisations nationales de travailleurs et d'employeurs ne sont pas empêchées de recevoir une aide financière ou autre de la part d'organisations internationales, notamment en levant la nécessité de l'autorisation préalable pour pouvoir coopérer avec des organisations internationales.

Il est fondamental que le gouvernement mène des enquêtes sérieuses sur les faits de violence perpétrés à l'égard de syndicalistes, en particulier de M. Senyavsky, et qu'il poursuive et condamne leurs auteurs au moyen de sanctions dissuasives.

Le gouvernement doit veiller à faire cesser les abus de la procédure d'enregistrement qui visent à perturber le fonctionnement des organisations syndicales libres et indépendantes, à entraver leur enregistrement et à appliquer un traitement préférentiel à certaines organisations syndicales au détriment d'autres.

Le gouvernement veillera à s'abstenir de remettre en cause l'enregistrement des organisations syndicales libres et indépendantes et veillera à mettre fin aux procédures judiciaires en cours qui visent à dissoudre le Syndicat industriel des employés du secteur des combustibles et de l'énergie.

Le gouvernement veillera également à revoir, en consultation avec les partenaires sociaux, la législation et la pratique existantes en matière d'enregistrement et de réenregistrement des syndicats afin de garantir que le processus d'enregistrement n'est qu'une formalité.

Plus particulièrement, il conviendra de prendre toutes les mesures nécessaires, en droit comme en pratique, pour que le KNPRK et le Syndicat industriel des employés du secteur des combustibles et de l'énergie jouissent sans plus tarder de la pleine autonomie et de la pleine indépendance d'une organisation de travailleurs libre et indépendante et jouissent de l'autonomie et de l'indépendance nécessaires pour remplir leur mandat et représenter leurs mandants.

Le gouvernement veillera enfin à cesser la pratique de harcèlement judiciaire systématique à l'encontre de certains syndicalistes afin de les empêcher de s'engager dans des activités syndicales ou de poursuivre celles-ci. Il conviendra également que les peines prononcées à l'encontre de ces syndicalistes soient annulées et nous pensons ici particulièrement à M^{me} Kharkova et à MM. Baltabay, Eleusinov et Kushakbaev.

Le gouvernement veillera également à mettre en œuvre l'ensemble des recommandations formulées par notre commission dans le passé, en ce compris la roadmap de 2018.

Afin de mettre en œuvre toutes ces recommandations, nous invitons le gouvernement à accepter la venue d'une mission de contact direct avant la prochaine session de notre commission qui pourrait également prendre contact avec les organisations et individus concernés par les observations de la commission d'experts. Le gouvernement veillera également à fournir toutes les informations demandées par la commission d'experts pour sa prochaine session.

Présidente – Pour conclure l'examen de ce cas, je vous rappelle que la lecture du projet de conclusions y relatif aura lieu, comme pour tous les autres cas individuels, lors de la dernière séance de la commission, le vendredi 18 juin 2021.