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**Comisión de Aplicación de Normas**

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**13th sitting, 10 June 2017 (cont.), 11.15 a.m.**

**13<sup>e</sup> séance, 10 juin 2017 (suite), 11 h 15**

**13.<sup>a</sup> sesión, 10 junio 2017 (cont.), 11.15 horas**

*Chairperson: Mr Washington González*

*Président: M. Washington González*

*Presidente: Mr Washington González*

**Discussion of individual cases (cont.)**

**Discussion sur les cas individuels (suite)**

**Discusión sobre los casos individuales (cont.)**

**Turkey (ratification: 1993)**

Workers' Representatives Convention, 1971 (No. 135)

Convention (n° 135) concernant les représentants des travailleurs, 1971

Convenio sobre los representantes de los trabajadores, 1971 (núm. 135)

A Government representative (Mr PARLAK) pointed out that Turkey was once again placed on the agenda of the Committee as a result of a misinformed decision, if not a politically motivated one. He further pointed out that the Committee of Experts had not made any comment on the application of the Convention in law and in practice for the last two reporting periods. In this respect, he regretted that the Committee of Experts had not taken note of the protective provisions of the Act on trade unions and collective bargaining agreements (Act No. 6356), nor of the amendments made in 2012 to Act No. 4688 on Public

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Employees' Unions. The Committee of Experts had referred only to the allegations made by the Confederation of Public Employees' Trade Unions (KESK). To respond to these allegations, the Government needed adequate time to correspond with several public institutions and to make inquiries. As always, the Government would have provided, in due course, the necessary information. The fact that the Government did not have time to do so did not justify the inclusion of this case in the short list.

Regarding the legislation in force, he recalled that the amendments made to Act No. 4688 in 2012 introduced the following changes: (i) along with the shop stewards representing the majority trade union, minority trade unions were now also allowed to appoint workplace representatives; (ii) pursuant to section 23, it was now possible to appoint a shop steward at the workplaces with less than 20 public servants; (iii) paid time off given to shop stewards to carry out their activities was increased from two hours to four hours in a week; (iv) public employers could not change the workplace of shop stewards, the minority trade unions' workplace representatives, trade union officials, trade unions' branch office officials, trade unions' provincial and district representatives, without clear and precise justifications; and (v) the Act required public employers to provide facilities to the trade union representatives to enable them to carry out their duties during and outside working hours, in a manner that did not hinder management and provision of services. Similarly, Prime Minister's Circular No. 2003/37 also ordered public institutions to provide offices and noticeboards to trade union representatives, to the extent possible, and allot meeting and conference rooms, if available, for trade union activities, in accordance with section 23 of Act No. 4688.

Addressing the KESK allegations, he recalled that one of the cases concerned related to the transfer of Mr Celik from Ankara National Library to another workplace. Initially, by a letter sent in 2008, the Kultur Sanat-Sen Trade Union had appointed him workers' representative. However, another union member was named representative by a letter received in 2009. The latter person was still the workplace representative and attended the

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meetings with the administration in 2013, 2014 and 2015. In a different case, the transfer, in January 2015, of Mr Kuruuzum, Kultur Sanat-Sen Trade Union workplace representative in Antalya Provincial Directorate of Culture and Tourism, was revoked in accordance with section 18 of Act No. 4688, upon receipt of his letter in February 2015 indicating that he was a trade union workplace representative. Currently, he worked at Antalya Provincial Directorate of Culture and Tourism. In another case, the Ministry of Forestry and Water Affairs determined that Tarim Orkam-Sen Trade Union's workplace representative, Mr Sonmez, was very often absent from work without his employer's permission. He was transferred to Ankara Ninth Regional Directorate affiliated to the Ministry. However, he was reinstated to his previous job by the Ankara Third Administrative Court. In another case, a representative of the Trade Union of Public Administration Employees (BES), Mr Bektas, was transferred from Samsun Tenth Meteorology Region to Cankiri Meteorology Directorate because he had insulted, physically assaulted and threatened a colleague and disrespected his supervisor. His transfer was not related to any trade union activity. The Samsun Sixth Criminal Court of Peace found him guilty of the above acts. At no point did Mr Bektas claim anti-union acts. Furthermore, the employment contract of Haber-Sen Trade Union's workplace representative at the Directorate General of Press and Information, Mr Kaftancioglu, was terminated when he had failed an exam to determine his qualifications. He was reinstated in his previous job by a verdict of the First Administrative Court of Ankara. As the relevant institution appealed to the Court of Cassation, the case was still pending. Further on, Mr Taskesen, Yapi-Yol Sen Trade Union's workplace representative at the workplace in Kahramanmaras was transferred to the workplace in Antakya of the same Regional Directorate in October 2014. The Administrative Court of Kahramanmaras stayed the execution of his transfer in December 2014 and consequently repealed it in March 2015. While the case was still pending, upon his request, he was transferred to his previous workplace in January 2015 and was still working there. From the file of Mr Berberoglu, BES Trade Union workplace representative at the Izmir Guzelbahce Revenues Directorate, it appeared that he had violated the regulation on appearance and

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attire despite being warned on several occasions. As a result, he was transferred to another workplace of the same public institution in the same city. The Third Administrative Court of Izmir ruled that the decision was in conformity with the law. He retired from the public service in July 2016. Regarding the allegation that no office space was allocated to the BTS Trade Union in four workplaces in 2014, the speaker indicted that an investigation by the Directorate General of State Railways revealed that there was no such application by the said trade union for the allotment of an office in 2014.

**The Government representative** emphasized that the protection provided to workers' representatives by the Convention existed only if they acted in conformity with the existing laws. In case of any grievance, administrative and judicial remedies were in place and functioned effectively in Turkey. Regarding the observation made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) he noted that it did not refer to any discrepancy between the law and the Convention. In conclusion, he recalled that Act No. 6356 regulated the protection of trade union shop stewards. Pursuant to its section 24, an employer could not terminate the employment contract of shop stewards unless there was a just cause for termination. The shop steward concerned and his trade union had the right to apply to the competent court, which could order reinstatement without the loss of pay and benefits. Moreover, no major changes in employment, including transfer, were possible without the shop steward's consent.

**The Worker members** noted that this was the first time the Committee discussed the application of the Convention in Turkey. This was a pertinent moment to discuss this issue as Turkey was now governed through emergency decrees adopted by the executive with no judicial oversight. The total disregard for the rights of workers and the lack of protection afforded to their representatives was embedded in the overall assault on democratic institutions. Workers' representatives were subject to arrests, dismissals, transfers and other forms of discrimination for defending the rights of those they represented. The Worker members were shocked to hear about the July 2016 coup attempt. While defeated, this

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violent attack perpetrated by some officials of the military took the lives of almost 240 people who courageously defended democracy over military rule. The Worker members commended the bravery of these citizens, many of whom were trade union leaders and members, and expressed their condolences and solidarity to their families. Even when they did not agree with the politics of certain governments, the Worker members would always stand firmly against those who wanted to impose brute force against an elected government. However, the authoritarian measures the Government had taken in the aftermath of the attempted coup had given rise to concern. While these were first targeted against persons who were allegedly responsible for the coup attempt, soon after the drastic measures taken were extended far beyond this group turning into a purge of oppositional voices. Workers' representatives in the public sector became a primary target for arrest, dismissal and harassment. Authorities had remanded more than 47,000 people in pre-trial detention and had closed down hundreds of associations, foundations and other institutions. In September 2016, the Minister of Justice stated that almost 34,000 convicted inmates would be released to make space in prisons. Many of those arrested and detained had absolutely nothing to do with the coup attempt or terrorist groups. They were mere trade union leaders standing up against destructive politics. For example, on 10 November 2016, the Trade Union of the Employees of the Public Health and Social Services (SES) organized a collective action against unjustified collective dismissals and the declared "state of emergency". The police intervened and many workers, including the joint leader of SES and members of the central executive committee, were detained. Even before the attempted coup, trade union leaders were subjected to arbitrary arrest. Twenty-six members and board members of the SES Muğla Branch, including Huseyin Sariefe, were taken into police custody on 11 October 2015 following a trade union rally to protest against a terrorist attack that had killed more than 100 people. Court proceedings had been initiated against them. The Adıyaman Governorate launched an administrative investigation against BES Women's Secretary, had changed her workplace and suspended her from her office for reading a press statement on International Women's Day in 2017. Almost 150,000 public servants had been dismissed

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and banned from public service under emergency decrees. The grounds of dismissal were always general and alleged that those dismissed were “members of, connected to, or in communication with a terrorist organization”, without any evidence being provided. Trade union officials in public institutions had been systematically targeted by false allegations leading to their suspension and dismissal in an attempt to get rid of trade unions in those institutions. By December 2016, 11,711 KESK members were suspended from office, including Gülistan Atasyon, KESK Women’s Secretary, Fikret Aslan, the President of BES, and Fikret Calagan, SES Executive Committee member. The majority of the dismissals were based on emergency decrees and workers were unable to challenge them in courts. The Worker members made an urgent appeal to the Government in relation to two colleagues who had been on a hunger strike for 93 days. KESK members, Nuriye Gülmen and Semih Özakça, had been protesting against their unfair dismissal by emergency decree. Their health condition was now at a critical stage.

In addition to dismissal and arrest, trade union representatives faced other forms of discrimination, such as forceful transfers and disciplinary procedures, often linked to critical social media messages of trade union representatives, which had allegedly “insulted” government representatives. Dismissals of trade union representatives before their official recognition by the Ministry of Labour were frequent given that the protection offered by the labour laws did not extend to the period during which worker representatives sought official recognition. Dismissals and other forms of discrimination had often led to the end of efforts to establish trade unions at those workplaces. In conclusion, the Worker members saluted the courage of those workers who put themselves at risk to give a voice to those they represented under extremely severe conditions and hoped that the discussion would help the Government to understand the impact of its policies on trade unionists and those they represented.

**The Employer members** recalled that this Convention was a technical Convention that sought to protect worker representatives from any act prejudicial to them. They highlighted

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that, in its brief observation, the Committee of Experts had requested the Government to provide comments on the observations made by the TÜRK-İŞ and KESK containing allegations of dismissal, transfers, disciplinary measures and denial of facilities to workers' representatives. The Committee of Experts had not commented on the legislation establishing protective measures both in the private and public sectors.

The Employer members noted the elements submitted by the Government in relation to the individual cases referred to by KESK. They also noted the legislative developments mentioned by the Government regarding the protection on union representatives in the public sector, including protection against dismissal, and understood that workers' representatives enjoyed effective protection against dismissal and other prejudicial acts in the private sector and that Act No. 4688, as amended, prohibited dismissals, relocation and prejudicial treatment due to trade union activities. They considered that information was necessary in order to ensure a full understanding of the situation in the country concerning the application of the mentioned pieces of legislation and encouraged the Government to provide the requested information to the Committee of Experts without delay.

**A Worker member of Turkey (Mr GOK)** referred to the history of Turkish labour legislation with regard to the protection of workers' representatives or workplace union representatives. The first relevant legislation was Labour Act No. 3008 adopted in 1936, followed by the Trade Unions Acts Nos 274 and 2821, which were adopted in 1963 and 1983, respectively. Pursuant to these Acts, employers could not terminate the work contract of the workplace union representatives unless they had a justifiable reason clearly stated in writing. This protection had been abolished with Act No. 4773 in 2002, but reinstated by section 24 of Act No. 6356. The same provision, which was still in force, also prohibited employers from changing the workplace and the main job duties of union representatives. Furthermore, if the employer terminated the employment contract of the union representative, a complaint could be filed before the court by the representative or his or her union, within one month from the date of the notification of the termination. The court could

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direct the employer to reinstate the representative without loss of pay or benefit. Act No. 6356 was in line with the Convention. However, these protections applied only to unions that had already organized more than 50 per cent of the workers and had been recognized as competent collective bargaining agents. At the workplaces where the organizing activities had just started, the workers participating in these activities did not benefit from the same guarantees and were generally dismissed by their employers. They could only receive compensation if they could prove that they had been dismissed on account of their trade union activities. Therefore, it was necessary to extend the scope of the current regulations to these workers.

During the military coup attempt, 248 innocent people had been killed. If the coup attempt had been successful, the democratic institutions and civil society organizations including trade unions would have ceased to exist. This was for instance evidenced by the case of the executives of the trade union All Motor Vehicle Transportation Workers' Union (TÜMTİS), who had been accused and detained on false charges. The judges in their cases had eventually been dismissed for being members of the Fetullah Gulen Terrorist Organization (FETO). All parties, including the opposition, were united and asked for the punishment of the criminals of this bloody coup. At the same time, they had concerns about the possible innocent people facing difficulties to prove their innocence before the courts. In this regard, the announcement by the Government of the establishment of a commission to provide access to the legal process for those people was welcome. Terrorism endangered the democratic values and workers' rights and freedoms. In addition to the military coup attempt, Turkey had been the target of frequent terrorist attacks, especially at its south and south-east borders. Under these circumstances, it was not easy to put labour-related issues on the agenda of the country. He looked forward to the end of the state of emergency as soon as the serious threats to democracy were overthrown.

**Another Worker member of Turkey (Mr DEMIRCI)** noted that, in the wake of the attempted coup, 4,800 public officials, members of the Turkish Confederation of Public



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Workers' Associations (Türkiye Kamu-Sen), including 39 branch executives and 50 workplace representatives, had been dismissed by an emergency decree for presumed support of the Gulenist movement. No international Conventions or national legislation had been taken into account during the dismissal process, nor had the investigations or punishment process been carried out. The right to self-defence had been ignored. The guilty and the innocent had been mixed together. A commission of seven members, mostly from the high courts, had now been established to review those dismissals; however as yet, no decision had been handed down. Clearly, problems persisted with the implementation of the Conventions and the situation was worsening. He urged the Government to implement ILO standards and respect national legislation.

**The Employer member of Turkey (Mr CENTEL)** recalled that the observation of the Committee of Experts referred to the allegations of KESK, which concerned dismissals, transfers and disciplinary measures against workers' representatives, and regretted that the Government had not responded to these claims. During the attempt to overthrow the Government, over 300 people had been killed and more than 2,000 wounded as a result of the failed coup. The speaker condemned any terrorist attack or unconstitutional effort to seize power and overthrow democracy. Workers' representatives in Turkey enjoyed effective protection against dismissal and any other prejudicial acts. In line with the Convention, these protections applied to all employees regardless of their sector of activity. The national laws and judicial practices also provided for effective and sufficiently dissuasive sanctions to prevent the violation of workers' representatives' rights. For public sector employees, the protection of worker representatives was regulated under Act No. 4688. Section 18 of this Act prohibited all kinds of dismissals, relocation and prejudicial treatment due to the trade union activities of public servants. The Act also extended this protection to the provincial and regional directors of public servants' trade unions. For private sector employees, the union representatives enjoyed a high level of protection in accordance with Act No. 6356. The employment contracts of union representatives could

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not be terminated without just cause. In addition, if the union representative was reinstated by a court decision, the employment contract would be presumed to have continued and the wage and benefits would be paid. It was important to examine whether, in the cases referred to by KESK, the representatives had acted in conformity with existing laws. Adequate time would be needed to respond, since the allegations involved several public institutions.

**An observer representing the International Trade Union Confederation (ITUC) (Mr KOSE)** stated that KESK affiliates faced numerous violations of their rights, including transfers, reassignments to new workplaces, denial of promotions, filing of criminal charges and other legal proceedings against them, suspensions and dismissals, administrative investigations, fines and penalties, mobbing, detentions, arrests and violations of their freedom of speech on social media. In addition, KESK had been targeted by campaigns of discreditation. The state of emergency had been declared on 21 July 2016 on the basis of article 120 of the Constitution. Members of certain unions had been dismissed through emergency decrees. The coup attempt was completely unrelated to the unions affiliated to KESK. While government officials claimed that the dismissals aimed at removing coup plotters from state functions, dismissals targeted opponent democratic forces and trade unions in political conflict with the Government. Thousands of public employees, members and executives of trade unions had been dismissed through an emergency decree and not granted access to justice. There were consistent and serious violations of labour rights. Scientists who had different ideologies than the ones promoted by the Government had been dismissed from academia. The system in place was authoritarian and dictatorial, and aimed at turning unions into branches of the ruling party. Such violations continued and were on the increase. The ILO should take an active role before more mass dismissals occurred. Thus, this case should be included in a special paragraph of the Committee's report.

**The Worker member of the Netherlands (Ms VAN WEZEL)** recalled that, as set in its preamble, Convention No. 135 supplemented the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), and that it sought to protect worker representatives

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from any act prejudicial to them, including dismissal, based on their status or activities as a worker's representative or on union membership or participation in union activities. Worker representatives at all levels, including trade union officials, could only fulfil their duties if they were free to publicly criticize company or government policies if these policies harmed the interests of workers and if they were able to organize peaceful meetings and demonstrations to express the grievances and demands of the workers and communicate these to the general public. This year's report for the recurrent discussion on fundamental principles and rights at work also referred to the importance of these civil liberties. These freedoms and rights were increasingly restricted in Turkey as the media were put under the Government's control or silenced and trade union officials were threatened with arrests on the accusation of insulting the Government or the President. Both the President and the General Secretary of the Confederation of Progressive Trade Unions of Turkey (DİSK) faced these charges and other forms of harassment. Many trade union officials had their telephones tapped, houses raided and computers confiscated and trade union industrial action in Turkey was increasingly harmed not only by dismissal of union representatives but also by violence from the police as well as from employers. Emphasizing that these intimidations precluded the effective representation of workers' interests, she urged the Government to refrain from any action contrary to the Convention and to adopt a policy of protecting and facilitating the role of workers' representatives.

**An observer representing the International Transport Workers' Federation (ITF) (Mr SUBASINGHE)** noted that the protection afforded to worker representatives under section 24 of Act No. 6356 was rendered ineffective by serious limitations on the right to organize. Under this Act, a trade union could appoint a workplace representative only after official recognition of the trade union by the Ministry of Labour, and on the condition that employers had not objected to the Ministry's determination. In reality, an employer's objection could cause delays of up to three years, during which time the employer could dismiss union members or make them resign the union. In an ongoing dispute between

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ITF-affiliated union Nakliyat-İş and an international logistics firm, the company had dismissed 168 workers on grounds of redundancy at the same time the union had filed its recognition application with the Ministry. This had not been a coincidence, and numerous examples existed of such situations. Nor were union officials immune from reprisals. After a successful organizing drive in 2007, 14 leaders of TÜMTİS had been arrested on the basis of the company's complaint and sentenced to prison terms for, according to the judicial decision "founding an organization for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair gain and obstructing enjoyment of union rights". Seven of those arrested remained in prison, and the branch leader Nurettin Kılıçdoğan, had been moved to a high security unit because of his status. Given that the price of joining a union was so high, the speaker wondered where future workers' representatives would come from. Freedom of association could be exercised only in a climate free of intimidation. Arrests of trade unionists, dismissals of workers and union organizers created an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities. The speaker called on the Government to provide an effective remedy to unjustified termination of employment of workers' representatives and union members, which should include their reinstatement, payment of unpaid wages, and maintenance of acquired rights. He further asked the Government urgently to review the sentences of the TÜMTİS leaders.

**The Worker member of Germany (Ms BONNING)**, speaking also on behalf of the Worker members of France and Italy, stated that it was unquestionable that a State may, in the face of a risk of a coup or a terrorist threat, be able to declare a state of emergency. However, the proclamation of a state of emergency should serve to defend or restore fundamental rights and the rule of law. Access to free and independent justice should be preserved and no one could be found guilty without a court decision. Human rights, including trade union rights, freedom of association, the right to collective bargaining and the right to strike should not be restricted. The dismissals and arrests of scientists and

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teachers, many of whom were trade union members or representatives, were already a reality before the coup. The proclamation of the state of emergency and its extension had escalated the situation and was used to eliminate critical views, including from teachers and employees, independent unions and their representatives in the public administration. It was hard to believe that the mass dismissals and the mass arrests including among trade unionists and union officials were aimed at maintaining democratic order. Those persons had not learned the reasons for their redundancies. On the basis of a decree, they had found their names published on the list of names. They were dismissed without compensation and excluded from the social security system. They did not have the opportunity to prove their innocence in a transparent, independent and fair trial, and to take action against unjust dismissals or suspensions. Courts which normally would have been competent to review the dismissals of workers and public servants were not in a position to consider those cases. In conclusion, the speaker stressed that without an adequate representation of workers, neither freedom of association, nor the right to collective bargaining, nor the right to strike could be effectively respected.

**An observer representing the IndustriALL Global Union (IndustriALL) (Mr ÖZKAN)** expressed deep concern regarding the impact on fundamental trade union rights and freedoms of recent developments in Turkey. A high-level mission of global and European trade unions had recognized that Turkey faced multiple challenges and threats, but had noted that measures adopted under the current state of emergency were disproportionate to the needs of security. IndustriALL demanded that the Turkish authorities stop legally unfounded collective dismissals, suspensions, intimidation and arrests; revert to legislation based on the presumption of innocence, individuality of criminal responsibility, the right to impartial and transparent trial and appeal, and respect for the rule of law and democracy; put in place the Inquiry Commission on State of Emergency Measures and ensure that its decisions were subject to judicial review and effective, timely appeal procedures, including at European level; reinstate those who had been arrested or suspended; restore freedom of

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expression and speech for the media and associations; and respect and implement ILO core labour standards, in particular Convention No. 135, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98. The right to strike was threatened in Turkey. Decrees had banned strikes in the glass, metal, banking and pharmaceutical sectors, contending that they threatened national security or public health. The speaker reiterated IndustriALL's support for the democratic values and freedoms set out in ILO Conventions, international and European charters, as well as for the rule of law, and called upon the ILO to monitor the implementation of these as related to trade unions in Turkey.

**Le membre travailleur du Niger (M. IDRISSE)** a souligné qu'il convenait d'analyser ce cas de manière lucide et à la lumière du contexte dans lequel les différentes violations sont commises. Si ces violations font suite à la tentative de coup d'Etat de juillet 2016, il y a lieu d'apprécier autrement les faits. Toute tentative de prise de pouvoir par les armes est condamnable car elle ouvre la voie à tous types d'abus et de violations, y compris de la liberté syndicale. Concernant les faits en Turquie, le BIT devrait fournir son assistance technique pour renforcer le dialogue social entre le gouvernement et les partenaires sociaux. Il est à espérer que les représentants des travailleurs et des employeurs turcs soient en mesure d'indiquer, lors de la prochaine session de la Conférence, que les choses sont rentrées dans l'ordre. Ce défi est à leur portée.

**La miembro trabajadora del Brasil (Sra. FARIA)** expresó su sincera solidaridad con los trabajadores de Turquía, habida cuenta de la inestabilidad política existente en el país que puede ser perjudicial para la democracia y para el movimiento sindical. Ante las sistemáticas y reiteradas violaciones del Convenio, cabe citar al Comité de Libertad Sindical que señala que «uno de los principios fundamentales de la libertad sindical es que los trabajadores gocen de protección adecuada contra los actos de discriminación antisindical en relación con su empleo — tales como despido, descenso de grado, traslado y otras medidas perjudiciales». Ahora bien, en el caso examinado, el Estado viene cometiendo todo

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tipo de violaciones contra los sindicatos y sus dirigentes: persecuciones, despidos injustificados e incluso detenciones y arrestos arbitrarios. La faceta más cruel de las violaciones cometidas son las detenciones y los arrestos ya que se cercena la libertad de un ser humano. Encarcelar a una persona por sus convicciones y prácticas político sindicales constituye ciertamente una de las formas más perversas de persecución y viola los tratados internacionales de derechos humanos. Sólo en el año 2016, como mínimo 292 miembros de la KESK fueron arrestados por fuerzas de seguridad del Gobierno y todas las acusaciones tienen como punto de partida la actuación sindical. No se aseguran los derechos y garantías mínimos de los trabajadores contra actos antisindicales por parte del Gobierno, violando no sólo este Convenio sino también el Convenio núm. 87. La oradora instó al Gobierno a que revocara el estado de emergencia y sus decretos, restableciendo la normalidad democrática.

**The Worker member of Sweden (Mr RUUKEL)**, speaking on behalf of the trade unions of the Nordic countries, noted that the protection of workers' representatives against prejudicial acts, including dismissals had been affected by the failed coup attempt and the declaration of a state of emergency. This was especially true for public servants. The state of emergency was still in force. The Government had enacted at least 23 decrees, mostly to dismiss public servants and increase government, police and military powers which, according to the Interior Minister's recent statement, had led to the detention of 113,000 people. In addition, more than 138,000 civil servants had been suspended or dismissed without investigation or the possibility of legal challenge, many of them workers' representatives. By Decree No. 685 of January 2017, the Government had established, for a two-year period, a State of Emergency Procedures Investigation Commission, mandated to review the dismissals. Yet if only half of the civil servants dismissed filed an application, the Commission would need to examine more than 100 files per day to complete its work within the allotted time. The speaker called on the Committee to adopt clear conclusions requesting the Government to revert to the rule of law and to provide for an effective redress

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mechanism for the thousands of civil servants and workers' representatives who had been unfairly dismissed.

**The Government representative** recalled that 248 people were killed and more than 2,000 were injured, most of them civilians, during the 2016 coup attempt. FETO, the organization behind the coup attempt, had infiltrated the Turkish Armed Forces, the police, the judiciary, education institutions and public administration at all levels and formed a structure parallel to the State with the aim of overthrowing an elected Government and taking over the State through the use of every means, including threats, blackmail, coercion, violence and murders. If it were successful in its heinous attempt on the night of 15 July 2016, no doubt there would be many thousands of executions by the perpetrators and now we would have been talking about murders rather than dismissals. Unfortunately, Turkey was not only facing the threat of FETO but also of other terrorist organizations such as DAESH or ISIS, and PKK. Following the failed coup attempt, the Council of Ministers declared a state of emergency as of 21 July 2016 in accordance with article 120 of the Turkish Constitution. Pursuant to article 129 of the Constitution, public servants were obliged to carry out their duties with loyalty to the Constitution and the existing laws. The same was required of public servants by virtue of Public Servants Act No. 657. Section 125 of this Act stipulated that acting in cohort with the terrorist organizations or helping them or using or making available public means and resources to assist these organizations or making propaganda for these organizations was an act punishable with a dismissal. Section 137 of the Act regulated the suspension during an investigation as an administrative precaution. Fight against terrorism and against the perpetrators of the coup attempt, which aimed to abolish fundamental rights and freedoms and free democratic order established, was being conducted in conformity with the international and national law. Turkey invoked Article 15 of the European Convention on Human Rights, pursuant to which, in time of war or other public emergency threatening the life of the nation, any high contracting party may take measures derogating from its obligations under that Convention. The coup attempt posed a



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serious and actual threat not only to the democratic constitutional order but also to the national security. Thus, it was necessary to take extraordinary measures to eliminate the threat as a matter of urgency. Waiting months or years for the investigations to bear results was not an option in the wake of a bloody coup attempt and in the face of imminent danger to the national security and hence, known associates and members of the terrorist organizations needed to be dismissed immediately. While there were still threats of new attempts to overthrow the Government, the Government had set up a Commission to review the state of emergency decisions. This Commission will review the dismissals of public servants who claimed they were dismissed unfairly by a Decree with the Force of Law. Those who were dismissed by an administrative decision had the right to apply to administrative courts. Members of the Commission were already appointed. It would start functioning as soon as it laid down its working principles and methods. Nevertheless, the Commission would begin receiving applications before 23 July 2017. Decisions of the Commission would be open to a judicial review, last resort being the European Court of Human Rights. In conclusion he urged the members of the Committee as well as the international community to try to feel empathy towards Turkish people and emphasized that the right to organize and protection against anti-union discrimination was guaranteed by the Constitution and labour legislation. Both unions and workers had judicial means to contest discriminatory actions. Under the Penal Code, in particular, its sections 118 and 135, acts of anti-union discrimination by employers were considered as crime punishable from one to three years of imprisonment. In addition, labour legislation provided for compensation and reinstatement.

**The Employer members** appreciated the information provided by the Government representative and called on the Government to provide it to the Committee of Experts without further delay.

**The Worker members** emphasized the extreme concern about the gravity and systematic nature of the infractions against workers' representatives in Turkey. The de facto

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suspension of democratic institutions and the rule of law were unacceptable and were a reminder of the times when Turkey was ruled by the military. The Government needed to urgently get back on the path to democracy. The declaration of a state of emergency did not give carte blanche to ignore all international obligations. Without the rule of law and the due process, there could be no genuine protection for workers' representatives. The discussion before the Committee had demonstrated how workers' representatives had been specifically targeted in the Government's purge of the opposition. The Government was called upon to not renew the state of emergency after July 2017 and to refrain immediately from issuing any further emergency decrees leading to the arbitrary arrests and dismissals of trade union representatives. Those who were detained or imprisoned for representing and defending the rights of workers had to be unconditionally released and afforded compensation. Among them, Nuriye Gülmen and Semih Özakça who had never committed a crime, had to be released without conditions. They were the voice of many others who were unable to speak out fearing retaliation against themselves and their families. The state of emergency had been abused to systematically dismiss and transfer workers' representatives from their workplaces. Workers' representatives who had been dismissed from their jobs or forcefully transferred had to be reinstated without any further delay. Any person suspected of having engaged in terrorist acts had to be charged criminally and judicial proceedings had to be initiated. However, these charges could not serve as a mean to victimize the entire public sector. Furthermore, the Government needed to address the lack of protection from retaliation before the formal recognition of a trade union. The legislative provisions protecting workers' representation from prejudicial acts based on their status, activities as workers' representatives, union membership, or participation in union activities had to be extended to the period during the pendency of the official recognition of the trade union. Recalling that Taner Kiliç, Chair of Amnesty International, had been recently charged with membership of a terrorist organization and was held in pre-trial detention, the Worker members called for his release and urged the Government to reinstate fundamental labour rights, including the protection of workers' representatives.

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(...)

*The sitting closed at 12.50 p.m.*

*La séance est levée à 12 h 50.*

*Se levantó la sesión a las 12.50 horas.*

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