

Committee on the Application of Standards

Date: 16 May 2022

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

Ecuador (ratification: 1967)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

The Ministry of Labour, pursuant to its constitutional and legal powers, is the body responsible for regulating and guaranteeing the right to work in the territory of Ecuador, in accordance with the provisions of the Constitution of the Republic of Ecuador, international agreements signed by the country and the legal system in force, specifically the provisions of articles 33 and 326(7) and (8) of the Constitution, in which the right to freedom of association is recognized, with the State having the implicit duty to promote the functioning of labour organizations in accordance with the fundamental principles of democracy, participation, transparency, rotation and legality.

It should be noted with regard to the exercise of constitutional rights in Ecuador that, in accordance with article 11(3) of the Constitution, the said rights shall be immediately applicable to and by any male or female public servant. It should be emphasized that constitutional rights will be exercised in a progressive manner through standards, jurisprudence and public policies, in accordance with article 11(8) of the Constitution, complying in this regard with previous requirements for exercising that right, taking into consideration that freedom of association is a right recognized in the Ecuadorian legal system, as provided for by article 326(7).

In terms of application of the hierarchy of standards enshrined in article 425 of the Constitution, the State is bound to apply the provisions of ILO Convention No. 87, an instrument which defines freedom of association as the right of workers to establish and join organizations of their own choosing; to draw up their constitutions and rules; to elect their representatives in full freedom; and to organize their administration and activities and to formulate their programmes, without interference from the public authorities.

In order to monitor compliance with the provisions of Convention No. 87, the ILO has made concrete observations to the country. The Ministry of Labour therefore considers it important to underline the following points.

In accordance with the principle of legality and the right to legal certainty, the State of Ecuador is developing a normative proposal in the area of labour legislation and at the same time seeking to issue or reform related standards (Regulations on Labour Organizations) with legal and technical input from the Ministry of Labour, taking account of the participation of workers and employers in tripartite dialogue forums, in order to comply with the principles of participation, transparency, rotation and legality on the part of the State, and thus better guarantee the application of the right of association.

In this context we inform you that the Ministry of Labour has granted legal personality to a total of 5,783 labour organizations (4,064 private, 1,719 public), with a membership of 312,748 persons. These data are constantly being updated, according to the information supplied by the organizations. As regards committees of public servants, three organizations have obtained legal personality, with 979 members. As part of the implementation of the functions of the Ministry of Labour with respect to labour organizations, since 2021 the Ministry has responded, through ministerial decisions or official letters, to 2,416 applications relating to constitutions, statute reforms, registration of executive committees and various formalities.

The Republic of Ecuador is currently complying with the ruling of 25 May 2021, as part of judgment No. 17981-2020-02407, on the case of the right to freedom of association, which, in its relevant part, contained the following *inter partes* decision:

[It is ordered that:] “(2) The Ministry of Labour, pursuant to revision and analysis of the documents of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), shall proceed with its registration as a trade union. (5) The Ministry of Labour shall regulate the exercise of the right to freedom of association by branch of activity.” In compliance with the above-mentioned due process and the regulations in force, legal personality was granted to the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), by means of Ministerial Decision No. MDT-2022-001 of 11 January 2022, further to registration of the list of constituent members by means of Official Letter No. MDT-VTE-2022-0035-O of 10 January 2022. In addition, as the Ministry of Labour already explained, secondary legislation is being developed.

The State of Ecuador is undertaking the necessary actions to comply with the provisions of Convention No. 87. In this context, we reiterate our acceptance of the technical assistance to be provided by ILO experts, presented in 2021 as part of the reports on Conventions ratified by the country. This assistance will make it possible to hold working groups on the implementation and applicability of legal instruments for fostering and above all enabling tripartite social dialogue in Ecuador, the aim of which is to reinforce existing channels of communication between the Ecuadorian Government and the national actors in the labour sphere.