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Fifteenth sitting, 18 June 2019, 4.40 p.m.
Quinzième séance, 18 juin 2019, 16 h 40
Decimoquinta sesión, 18 de junio de 2019, 16.40 horas

Chairperson: Mr Rochford
Président: M. Rochford
Presidente: Sr. Rochford

Discussion of individual cases (cont.)
Discussion sur les cas individuels (suite)
Discusión sobre 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, Vice-Minister, Ministry of Labour and Social Protection of Population) – Kazakhstan is a member of the ILO since 1992 and is striving to fulfil its commitments in accordance with the national standards and practices. In our years of working with the ILO, Kazakhstan has

ratified 24 Conventions which have been implemented by the legislation of the country. The ILO, through providing technical consultation and assistance, has supported the country. The work of the high-level mission which visited the country in May 2018 resulted in a road map to implement the recommendations of the Committee and the Committee of Experts with regard to the Convention. In the framework of the road map implementation, an analysis has been carried out on the application of the Law on Trade Unions and the National Chamber of Entrepreneurs (NCE) in consultation with the employers' and workers' organizations at all levels, including national, territorial, and the local level.

A number of recommendations have been prepared on the assistance and procedures to follow to receive financial assistance from international workers' and employers' organizations. Information has been sent to the Committee of Experts on the judges' associations, prison staff and firefighters' unions, and on collective agreements covering these categories of workers.

The road map has been developed in light of that. A draft law on changes to labour legislation has been developed and I would like to inform you that on 20 May of this year the draft law was submitted to the Office of the Prime Minister and the President's Administration. Once again, we would reaffirm Kazakhstan's commitment to the ILO in the area of social and labour relations. In this regard, allow me to report on the measures taken in response to the comments that we have received from the Committee.

Firstly, with regard to the right to establish organizations without prior authorization (refusal of registration, re-registration and liquidation of organizations). Currently, there are three national trade union organizations representing around 3 million workers (or practically half of the wage workers in our country). There are 39 sectoral, 19 regional, 439 local, and more than 20,000 primary trade union organizations.

By virtue of an Order of the Ministry of Labour and Social Protection of Population, adopted on 29 June 2018, expert advice was provided on the question of registration and

activities of trade unions to more than 100 trade unions. According to the legislation, all trade unions of Kazakhstan are established without prior authorization – neither the State’s nor the enterprise’s – as per the Convention. Primary trade unions do not have to undergo registration in the justice departments. If trade unions wish to acquire legal personality and obtain a business identification number, then they have to undergo registration. If there are shortcomings, the registering body rejects the application and provides the reasons therefor.

Regarding the registration of the Congress of Free Trade Unions of Kazakhstan (KSPK), once all shortcomings identified by the registering body are addressed, it can once again apply for the registration (and can do so an unlimited number of times). We will provide the support to any trade unions seeking registration.

The draft law I have referred to will simplify the procedures and will give a union one year (instead of six months) to confirm its status.

Secondly, with regard to the comments relating to the right to form and join organizations of one’s own choosing, in Kazakhstan, trade unions enjoy the right to establish trade union organizations, choose the status and structures and area of activity. They are not dependent upon state bodies and they are not subjected to their authority nor do they have to report to them.

The mandatory association, as provided for in the Law on Trade Unions was necessary to strengthen the role of trade unions in resolving issues arising when they are carrying out their functions to protect the interests of workers. The provisions of this law served to make trade unions strong social partners whose opinions, as the result, carried weight when it came to taking decisions in the labour and social sphere. However, in light of the comments of the ILO and a number of tripartite consultations with the social partners, a decision has been taken to review the existing system of trade union structures. To that end, a draft law to amend certain legislative acts of the Republic of Kazakhstan has been developed. It provides for the repeal of compulsory affiliation to a higher level trade union organization (in this

regard changes are being made to sections 12, 13 and 14 of the Law on Trade Unions), simplification of the procedure to confirm trade union status and increase to up to one year of the time frame given to trade unions to confirm their status of a republic, sectoral and regional organization. We would also express interest in receiving ILO technical assistance on the above-mentioned issues as the draft legislation passes through Parliament.

Thirdly, regarding the involvement of the Government in the NCE, proposals to amend the Labour Code have been formulated with a view to withdraw the authority of the NCE to represent employers at the national, sectoral and regional levels. In 2018, a five-year transitional period has ended; the Government withdrew from the structure of the NCE and no longer has a right of veto. The Government therefore has no power to impact on the activities of the NCE. The NCE will no longer be the representative of employers and that has the following implication: the NCE will no longer be on the tripartite commission on social partnership or other bodies. It will be leaving the sectoral organizations and will no longer be a signatory of the sectoral agreements. It will also no longer be present on the regional committees. The changes that I have indicated are provided for in the draft Law that I have mentioned which went to the Office of the Prime Minister in May this year. We would again, here, welcome the technical support of the ILO.

Fourth, and as concerns the right of organizations to organize their own activities and formulate their programmes, currently, amendments to section 176 of the Labour Code are being drafted in relation to the right to strike in hazardous facilities. In accordance with section 176 of the Labour Code, strikes are recognized illegal in the railway, civil aviation, healthcare and also hazardous facilities. The Labour Code states that at such organizations, strikes can be carried out if there are guarantees that services vital to populations will be provided, i.e. strikes will be carried out without harming the whole of the population of the territory concerned and without involving hazardous facilities.

The fifth comment relates to the amendments to article 402 of the Penal Code. In September 2018, an interdepartmental meeting examined this issue. The provision was

amended to so as to provide for an alternative penalty of community work. The Government will pursue its work in this regard.

The sixth comment relates to the right to organize and receive financial assistance from international organizations of workers and employers. In Kazakhstan, there are no obstacles to the cooperation and carrying out of activities aimed at training of trade union officials and development of social and labour sphere financed by international organizations with the sole exclusion of financial support for anti-constitutional activities which undermine the sovereignty and the independence of the country. The resolution of the Government of 9 April 2018 gives a list of international foreign organizations which provide financial support and grants; that list includes the International Labour Organization and a number of other institutions. We have provided a written explanation regarding the legislation dealing with the cooperation with international organizations. At the same time, the draft Law I have referred to contains an amendment on the right of trade unions to carry out activities with international organizations on projects to improve the situation of workers in the Republic of Kazakhstan.

In conclusion, I would like to say that the Republic of Kazakhstan will continue making all efforts to develop institutes of social partnership in order to protect the rights of workers and employers. We will also be moving to ratify the Part-Time Work Convention, 1994 (No. 175). Once again, I would like to reassure you that the Government of Kazakhstan will continue to take all necessary measures in order to achieve the objective of full compliance with Convention No. 87.

Membres travailleurs – Le cas du Kazakhstan est un cas récurrent devant notre commission. En 2015, 2016 et 2017 déjà, la situation au Kazakhstan, quant à la conformité à la convention, a été examinée par notre commission. Une mission de contacts directs, une mission tripartite de haut niveau et une feuille de route plus tard, nous revoilà confrontés au cas du Kazakhstan. Et nul est besoin de préciser que la situation dans le pays reste, malgré tout cela, particulièrement préoccupante sur le plan de la liberté syndicale. Nous craignons

que le pays ne prenne pas au sérieux les démarches entreprises jusqu'ici par l'OIT et qu'il n'y a pas de réelle volonté d'infléchir sa politique. Nous faisons déjà état lors des années précédentes de violences perpétrées à l'encontre de leaders syndicaux. Outre les violences déjà rapportées à l'encontre de certains leaders syndicaux, de nouvelles violences à l'égard de leaders syndicaux nous sont rapportées, plus précisément des violences à l'encontre du président d'un syndicat de travailleurs du complexe pétrolier et énergétique de la région de Karaganda.

Nous devons vivement déplorer que le gouvernement du Kazakhstan renoue sans cesse avec des pratiques contraires aux libertés fondamentales. A côté de ces faits de violence, les poursuites judiciaires à l'encontre de leaders syndicaux sont également un *modus operandi* répandu au Kazakhstan.

Le rapport fait état de la libération de MM. Eleusinov et Kushakbaev. C'est un pas dans la bonne direction. Nous soulignons néanmoins qu'ils font encore aujourd'hui, au même titre que M^{me} Kharkova, l'objet de restrictions fortes de leur liberté de mouvement et sont toujours frappés par l'interdiction d'exercer des activités syndicales.

Un certain nombre de points problématiques subsistent en lien avec la législation applicable au Kazakhstan. L'interdiction faite au personnel pénitentiaire et aux sapeurs-pompiers de constituer ou d'adhérer à une organisation syndicale pose problème. Le gouvernement du Kazakhstan affirme que seul le personnel qui a un grade (militaire ou de police) tombe sous cette interdiction. Il ne faudrait pas que le gouvernement du Kazakhstan use de cette justification afin de contourner et d'abuser de l'exception à la liberté de constitution et d'association pour la police et les forces armées contenue dans la convention.

Si tout le personnel pénitentiaire et tous les sapeurs-pompiers obtiennent un grade militaire ou de police, le gouvernement du Kazakhstan pourrait de facto les priver des droits et libertés consacrés par la convention. Il serait à cet égard intéressant de connaître la proportion de personnel gradé par rapport au personnel civil au sein de ces corps de métier.

Il a par ailleurs toujours été considéré que les fonctions exercées par les pompiers et le personnel pénitentiaire ne justifient pas leur exclusion des droits et garanties inscrits dans la convention. Je vous renvoie sur ce point au paragraphe 69 de l'étude d'ensemble de 2012 sur les conventions fondamentales.

Nous souhaitons également rappeler le principe de l'interprétation restrictive des dérogations à la liberté de constituer des organisations, tel que rappelé au paragraphe 67 de l'étude d'ensemble de 2012.

Il convient également dans le cas du Kazakhstan de rappeler le droit de constituer des organisations sans autorisation préalable. S'il peut être accepté que la constitution d'une organisation syndicale fasse l'objet d'un enregistrement, ce dernier ne peut pas être la condition préalable de l'exercice d'activités syndicales légitimes. Or, suite à l'entrée en vigueur de la nouvelle loi sur les syndicats, le Kazakhstan a imposé l'enregistrement ou le réenregistrement des organisations syndicales et considère les activités syndicales d'une organisation non enregistrée comme illégales. Les procédures d'enregistrement ont le plus grand mal à aboutir et sont parfois à ce point longues qu'elles portent atteinte à la liberté syndicale. Le gouvernement refuse systématiquement d'enregistrer des organisations syndicales indépendantes, voire procède au démantèlement des organisations syndicales préalablement enregistrées.

Citons la Confédération des syndicats indépendants du Kazakhstan (KNPRK), par exemple. Après deux ans de tentative d'enregistrement sans succès, ce syndicat a une nouvelle fois tenté sans succès de s'enregistrer sous un nouveau nom, le KSPK. Ce syndicat a dû faire face à quatre refus successifs d'enregistrement sans justification sérieuse. A côté des difficultés d'enregistrement rencontrées par les organisations syndicales indépendantes, de nombreuses autres organisations syndicales, dont l'indépendance est plus douteuse, ont bel et bien été enregistrées sans difficultés.

Le gouvernement met en avant le fait d'avoir mis en place une ligne d'assistance téléphonique concernant les questions d'enregistrement des syndicats. Il nous revient cependant que cette ligne téléphonique n'a ni les capacités ni le mandat nécessaire pour régler les problèmes en la matière.

Les travailleurs doivent avoir le droit de constituer des organisations de leur choix et de s'y affilier. Or la législation impose l'obligation aux organisations syndicales sectorielles territoriales et locales de s'insérer dans une structure d'une organisation syndicale de niveau supérieur, et ce dans un délai de six mois après leur enregistrement. Nous apprenons que le gouvernement projette d'allonger ce délai à un an. Cela n'est pas de nature à mettre la législation en conformité avec la convention.

Les organisations sectorielles doivent par ailleurs atteindre des seuils beaucoup trop contraignants pour pouvoir être fondées. Des seuils tels que, entre autres, inclure au moins la moitié des effectifs totaux des travailleurs du secteur ou couvrir le territoire de plus de la moitié des régions. Ces seuils sont trop élevés. Ils constituent une entrave à la constitution d'organisations syndicales et par conséquent au pluralisme nécessaire dans le paysage syndical. Pour être conformes à la convention, ces seuils devraient être fixés à un niveau raisonnable.

Au vu de ces éléments, il reste dès lors fondamental de rappeler que les travailleurs ont le droit de décider librement et en toute autonomie s'ils veulent ou non s'associer à une structure syndicale de niveau supérieur ou en devenir membres. Le gouvernement du Kazakhstan aurait dû avoir largement le temps, depuis 2015, de modifier la loi sur les organisations syndicales pour la mettre en conformité avec la convention. Force est de constater que ce n'est toujours pas le cas aujourd'hui. Les promesses faites et les engagements pris par le gouvernement ne suffisent plus.

La loi sur la Chambre nationale des entrepreneurs contient également des restrictions à la liberté d'association et d'organisation des organisations d'employeurs, en contravention à la convention.

Ces différentes atteintes à la liberté syndicale mettent en péril l'une des valeurs fondatrices de l'Organisation internationale du Travail, à savoir le dialogue social. Tant les organisations de travailleurs que les organisations d'employeurs sont en effet soumises à des restrictions de leur liberté de s'organiser. Une indépendance pleine et entière des partenaires sociaux est nécessaire afin que ceux-ci puissent librement et efficacement représenter les intérêts de leurs membres.

La législation prévoit qu'un certain nombre d'entreprises peuvent tomber sous la catégorie d'entreprises qui mènent des activités dites «activités industrielles dangereuses». Le caractère flou de cette notion et la possibilité pour une grande majorité des entreprises de déclarer qu'elles exercent des activités industrielles dangereuses ne permettent pas de déterminer avec précision quelles activités sont précisément visées par cette disposition. Cette incertitude implique, dans la pratique, que la plupart des actions menées par les syndicats peuvent être considérées comme illégales et revient à nier le droit de grève dans de très nombreuses entreprises.

La convention implique pourtant le droit des organisations d'organiser leur activité et de formuler leurs programmes d'action. Cette convention est pour nous le cœur du droit de grève et, nous le savons pertinemment, le droit de grève est le fondement même d'un exercice plein et entier de la liberté syndicale. La législation du Kazakhstan entrave de manière déraisonnable l'exercice plein et entier du droit de grève dans de trop nombreuses entreprises. La limitation du droit de grève ne peut être admise que pour les services essentiels. Les services essentiels doivent être entendus comme les services dont l'interruption mettrait en danger, dans l'ensemble ou dans une partie de la population, la vie, la sécurité ou la santé de la personne. Nous espérons que le gouvernement donnera enfin une

suite sérieuse aux recommandations que nous pourrions lui adresser à l'issue de nos discussions.

Des leaders syndicaux ont été condamnés et emprisonnés sur la base de l'article 402 du Code pénal, qui réprime pénalement le fait de poursuivre une grève déclarée illégale par un tribunal, avec des peines allant jusqu'à un an d'emprisonnement, voire trois dans certains cas. Nous souhaitons fortement insister sur le fait qu'un travailleur ayant participé à une action syndicale de manière pacifique n'a fait qu'user d'un droit fondamental et, par conséquent, ne doit pas être passible de sanctions pénales. Comme l'a déjà précisé l'étude d'ensemble de 2012, de telles sanctions ne sont envisageables que si, à l'occasion de l'action syndicale, des crimes ou délits sont commis, et ce exclusivement en application des textes punissant de tels faits.

Nous apprenons que, après une réunion à laquelle tous les organismes publics intéressés étaient invités, le gouvernement a l'intention de confier l'examen de la révision de cet article du Code pénal au groupe de travail interinstitutionnel du bureau du procureur. L'implication des partenaires sociaux sur de telles questions nous paraît également essentielle.

Enfin, la législation prévoit toujours une interdiction pour les organisations syndicales d'accepter une aide financière «directe» d'organisations internationales. Les projets et activités de coopération conjoints seraient quant à eux tout à fait autorisés en pratique. Les informations transmises par la Confédération syndicale internationale (CSI) font néanmoins état de refus de la part des autorités d'enregistrer des organisations syndicales pour la seule raison de leur affiliation à des organisations syndicales internationales, sans qu'il soit question d'un financement direct. La législation et la pratique ne sont donc toujours pas conformes à l'article 5 de la convention.

Le gouvernement affirme avoir émis des recommandations aux organisations syndicales en ce qui concerne la réception de financements d'organisations internationales.

Il sera utile de pouvoir en prendre connaissance par écrit et il conviendra qu'elles respectent les principes de la convention.

Employer members – I would like to thank the distinguished Government delegate for the submissions made before our Committee today. I begin by noting that the Convention was ratified by Kazakhstan in 2000 and this case, as the Worker spokesperson has pointed out, has been subject to ten observations by the Committee of Experts since 2006. This case has been discussed in the Committee three times, notably in 2015, 2016 and 2017, most recently.

In the Committee in 2017, the Employers' group noted that despite the very clear direction provided by the Committee in 2015 and 2016, and despite the long-standing concern expressed by the Committee of Experts since 2006, back in 2017 it appeared that the Government had still not taken action on the serious issues related to workers' and employers' organizations freedom of association, and in particular a lack of action on the issue of the freedom to establish and join organizations of their own choosing without prior authorization from the Government.

In the Committee in 2017, the Employers' group expressed its deep concern at the Government's continued failure to ensure that the Law on the National Chamber of Entrepreneurs of 2013 provide employers' organizations with full autonomy and independence without interference from the Government. The Employers' group noted its deep concern that the law resulted in the interference with the freedom and independence of employers' organizations in particular, and that the failure of the Government to amend this law was deeply problematic.

An ILO high-level mission to Kazakhstan took place in May 2018, which led to the adoption of a road map by the Government which included a promise of concrete action to address the issues of noncompliance, together with continued technical assistance from the ILO.

Furthermore, as regards specifically the issues of freedom of association that related to employers' organizations, and in particular related to the NCE, the ILO ACT/EMP Bureau undertook a technical mission to Kazakhstan in January of 2019. The specific purpose of that mission was to discuss with the relevant Ministries amendments to several laws related to the NCE. This resulted in a basic agreement on necessary amendments during the mission, and yet, despite that basic agreement about the necessary amendments, the Government in a later communication denied the necessity of most of the proposed amendments to the legal framework. In addition, we understand that the ACTRAV Bureau of the ILO provided technical assistance to the Government for ongoing freedom of association issues related to workers' organizations.

So there has clearly been continued and constructive engagement from various departments within the ILO aimed at raising the understanding of the Kazakhstan Government in this regard.

As a result of this activity, and the continued lack of progress, the Employers must begin our intervention this year, by once again expressing our deep concern at the Government's continued failure to ensure that the law on the NCE of 2013 must provide employers' organizations full autonomy to form and function. It must provide employers' organizations independence to form and function without interference from the Government. The establishment of the NCE by this law, constitutes a serious obstacle to employers' organisations freedom of association and in the Employers' group view, serious issues of continued non-compliance with the Government's obligations under the Convention.

Therefore, the Employers submit that, in particular, the legislative framework, and in particular the law on the NCE, which had the effect of establishing the NCE as an organization with compulsory membership and an all-encompassing mandate to represent employers, remains problematic and of concern. This concern is not alleviated by the Government's submissions today, that its participation in the NCE has withdrawn and that

it is no longer on the board with the power to impact the NCE. With all due respect, that is not information that appears to be accurate.

As a result, the restriction of the employers' freedom of association which has now persisted for more than five years, in which the Employers' group sees no progress to remedy the situation, requires the Employers' group to call upon the Government as a matter of urgency, to prepare, in close consultation with the social partners, of the most representative free and independent employers' and workers' organizations, amendments that are consistent in respect of the law relating to the NCE that will ensure that employers' and workers' organizations can establish and join organizations of their own choosing without Governmental interference. This we believe is of the utmost importance.

In addition, we also note that there are issues related with the Government's interference with the formation and establishment and free activities of workers' organizations. Many of those issues were addressed by the Worker spokesperson and the Employers would say that the availed information at this time, indeed points to obstacles that continue to exist regarding the registration of trade unions. Therefore, the Government should, in consultation with the representative social partners, review these obstacles in order to find solutions to give full effect to the right to establish organizations without previous authorisation, as required under Article 2 of the Convention.

In addition, the Employers note that there are certain aspects of the law on trade unions that continue to infringe the right of workers to decide with autonomy whether their trade union should join a national trade union or not. And it appears that there are elements of that existing law that pre-empts that decision.

In addition, there are issues of concern that deal with the high threshold that seem to be a significant obstacle to the workers' rights to establish and join organizations of their own choosing. Therefore, we also raise concerns in respect to these issues.

There is also a question in this case about the right of organizations to receive financial assistance from international organizations of workers and employers. And the issue here is the absence in the law of an authorisation of workers and employers organisations to benefit, for normal and lawful purposes, from the financial or other assistance of international workers and employers organizations.

Therefore, we take note of the Government's indication that a recommendation on receiving financial assistance from international organizations has been drafted, and we take this opportunity however to emphasise that it is important that this issue be clarified in an unambiguous manner by the law, and request the Government to clarify the legal status and the content of this Recommendation.

Finally, I note that the Government has made submissions in response to the Committee of Experts' observations regarding strikes in manufacturing and other hazardous industries. I also note Mr Leemans' statement in this regard. We would simply say at this point that the observations made by the Committee of Experts under this point which relate to provisions of the labour code, the law on civil protection, and the criminal code exclusively concern issues related to the right to strike.

In this case there are comments regarding strikes and entities operating hazardous production facilities that are considered illegal, and penalties that are foreseen for the incitement to continue a strike declared illegal by the court.

The Employers recall our well-known position that Convention No. 87 does not deal expressly with the right to strike, and therefore, this is not an issue in which with there is consensus within this Committee on the ability to give direction to the Government on these points. We also highlight at this moment that the position that Convention No. 87 does not expressly deal with the right to strike, is not only the position of the Employers' group, but it was also included in evidence by the 2015 statement of the Government group of the ILO Governing Body. Therefore, as there is no concessions on this point, we will not address this

issue any further, and leave the Government the flexibility to address these issues in a manner that it seems appropriate.

In closing of these opening comments, the Employers' group wishes to stress that it is at this time, that it is necessary that there be concrete action. There has been goodwill and good-faith efforts by the ILO and its various activities as well as the social partners, and now it is time for the Government, without any further delay, to remedy these issues which constitute significant interference with the free functioning of independent workers' and employers' organizations.

Interpretation from Russian: Worker member, Kazakhstan (Mr ABDIRAIYM) – I would like to focus on the main points which, in our view, from the point of trade unions, are the most important. Firstly, I would like to note that we, the Federation of Trade Unions (FPRK), are always in favour of solidarity between trade unions and we promote campaigns of trade unions.

In April, the FPRK came up with an official announcement to the attention of our colleagues, campaigners trying to look at the decisions of our colleagues, Messrs Eleusinov and Kushakbaev and thanks to our efforts, the courts decided to release them. On 18 May 2018, the FPRK joined the complaint of the International Federation of Trade Unions (ITUC) to the ILO. We support the commitments that have been undertaken by the Government and look forward to further improvements in legislation. In October 2018, the FPRK made an official appeal to the law and enforcement authorities of Kazakhstan in support of the statements of trade unions leaders from the KNPRK. What we want to note is with regard to the situations we have discussed here today. We are concerned about the fate of our colleague Mr Senyavsky who suffered an attack. We believe that it is important to ensure that those individuals involved are brought to justice.

Secondly, the FPRK is making the utmost efforts to promote and apply ILO principles and standards of the ILO. Following the high-level visit, the Government and the social

partners developed a road map for implementation of the recommendations of the Committee's comments on the application of the Convention. The FPRK has worked with other representatives, including the trade union leaders of Kharkova and Belkina, in order to draft amendments to legislation, as discussed by the Government today, which are necessary to bring practice into line with the Convention.

Taking into account the joint discussion, as well as a seminar that was held on 4 and 5 September 2018 which was organized together with the ILO, additional proposals for amendments to the Law on Trade Unions and other legislative acts were developed and sent to the Ministry of Labour. The FPRK participated in the working group to consider the draft of our amendments. The amendments aim at simplifying the registration procedure of trade unions; excluding the obligatory affiliation of trade unions; and participation of international organizations in trade union activities.

We have heard today a number of proposals from the Government. We did make a number of proposals which did not make it to the draft law; those related to the exercise of the right to strike and collective agreements. I think we can recognize that the changes being made to the Law on Trade Unions can lend a genuine impulse to the development of the application of the Convention in Kazakhstan.

We have recently raised the question on the need to ratify further ILO Conventions. Since the fall of the Soviet Union, we have not ratified many Conventions. We believe that the Government should strive to ratify five Conventions which are absolutely essential for the country: the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Collective Bargaining Convention, 1981 (No. 154); the Safety and Health in Agriculture Convention, 2001 (No. 184); the Part-Time Work Convention, 1994 (No. 175) and the Minimum Wage Fixing Convention, 1970 (No. 131). Ratification of these Conventions will enable us to improve the condition of labour and social legislation and enhance the legal protection and guarantees of workers.

We hope that the Government this time will respond responsibly, fulfil its obligations and that all of the issues that have been agreed and put into the road map and adopted following the visit of the ILO high-level mission will be resolved. We hope very much that all of those provisions will be put into practice.

Interpretation from Russian: Employer member, Kazakhstan (Mr BAIKENOV) – I would like to echo the information that we have heard on the importance of the Convention for employers' organizations. After the activities of the NCEs, the activities of workers' organizations were reduced. We were not able to do the work that we wanted because there was a law obstructing that, but before the creation of the NCE in Kazakhstan, there were efforts to unite the employers' structures in one organization. We were against this and we tried to appeal to the Parliament and the Ministry but unfortunately the process of changing legislation is extremely slow and some ministers were not able to continue this work while they were in office. I think there has been a detrimental impact on the capacity to implement the Convention because of the slowness of procedures. With the arrival of the new old Minister I think the activities relating to legal changes will continue. We have seen certain elements that were in the law being removed. I think that the acceleration of this process is very important. I welcome the visits of the ILO coming to meet the social partners and consider the application of the Convention. A number of proposals have come out of that which we, employers, agree with. All of the provisions indicated in these documents should of course now be put into practice by the Government. We hope that the first step will lead on to further steps, with an impact on the Law on Trade Unions and the Law on the NCE. These Laws limit the abilities of organizations, including employers' organizations, to exercise their rights freely. I think the processes that have begun will continue and will be completed this year. Our tripartite cooperation will enable us to be more successful as we move through the legislative process. A single organization like the NCE works for entrepreneurs but it cannot really work in the area of labour relations. I think that the changes that we have seen will take us close into line with the practice of the Convention.

Government member, Romania (Mr TACHE) – I am speaking on behalf of the European Union (EU) and its Member States. The EFTA country Norway, member of the European Economic Area, aligns itself with this statement. We attach great importance to human rights, including freedom of association and the right to organize of both workers and employers, and recognize the important role played by the ILO in developing, promoting and supervising international labour standards.

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 ILO fundamental Conventions.

Kazakhstan is becoming a recurrent case at the Committee, as conformity with the Convention was already discussed in 2016 and 2017. Repeated requests were made by this Committee to the Government to amend the legislation related to trade unions, notably the provisions of the Law on Trade Unions which limits the rights of trade unions to form and join trade unions of their own choosing, as well as other provisions included in the Labour Code, the Constitution and the Criminal Code.

We welcome that following the Committee's recommendations, an ILO high-level mission took place in May 2018. We note with interest that a road map was approved on this occasion which provided for a number of steps to be undertaken in order to implement the recommendations of the Committee of Experts. However, we regret the persistent lack of progress with regard to freedom of association, and the right to organize in the country including the right to strike, despite repeated requests by this Committee.

While welcoming the release of the two trade union leaders arrested in 2017, we express deep concern over allegedly continued harassment, intimidation and violations of fundamental human rights of trade unionists. This included the physical assault on the leader of the Karaganda region branch of the fuel and energy workers union in November 2018. At

this point, we take note that the released trade union leaders were reported to be prohibited from engaging in trade union activities.

We also express concern over the fact that some trade unions are still denied registration. In particular, the KNPRK, which went into liquidation and, as a consequence of the new law on trade unions, has still not been able to register or re-register. That said, we request the Government to engage with the social partners to review the difficulties identified by trade unions and to ensure the right of workers to establish organizations without prior authorization from the Government. Such a review should include the possibility of facilitating the registration and re-registration process of trade unions and revise the mandatory affiliation requirement.

We want to reaffirm that an environment conducive to dialogue and trust between employers, workers and government is essential for social and economic stability and contributes to creating a basis for solid and sustainable growth and inclusive societies.

Based on the above considerations, we reiterate the requests made in 2017:

- We call on the Government of Kazakhstan to respect the workers' right to establish and join organizations of their own choosing. To ensure that this right is fully respected, we urge the Government to amend the trade union law adopted in 2014 without further delay and in particular section 11(3), section 12(3), section 13(2) and (3), and section 14(4), in consultation with the social partners.
- Employers also have the right to form and join the organization of their own choosing. As repeated several times by this Committee, we urge the Government to amend the Law on the Chamber of Entrepreneurs and any other relevant legislation to ensure the autonomy and independence of the free and independent employers' organizations in Kazakhstan.

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- We urge the Government to take measures to ensure that the right to strike is fully respected in the country and amend the 2015 Labour Code as well as section 402 of the Criminal Code accordingly, as the Government has already committed to several times before this Committee. We request the Government to provide information on the reform of the criminal law and procedure so that no penal sanction is imposed against a worker for having carried out a peaceful strike.

 - Finally, we encourage the Government to take the necessary measures – in line with the current experts’ report – to authorize workers’ and employers’ organizations to receive financial assistance from international organizations of workers and employers.

We are pleased to hear that the Government is preparing a new Law to amend the Law on Trade Unions. We encourage the Government to continue to avail itself of ILO technical assistance in order to proceed with the reforms needed and ensure that the legislative changes comply with ILO Conventions.

In practice, we expect from the Government not to impede registration of independent trade unions, to respect the workers’ right to organize and freedom of association, including the right to strike, and to put an end to harassment, intimidation and arrests of trade unionists in the country. We will continue to closely monitor the situation and remain fully committed to our cooperation and partnership with Kazakhstan.

Government member, United States (Ms MORENO) – The United States is deeply concerned by the ongoing obstacles to the achievement of freedom of association in Kazakhstan. In particular, we are troubled that the Government has not instituted any meaningful changes to address the issue.

The Committee has reviewed this case every year since 2015, except for 2018 when a high-level tripartite mission visited the country. Throughout this time, the Government has not implemented any of the recommendations of the supervisory bodies. This inaction has allowed for the continuous violation of the rights of workers and employers in Kazakhstan.

This is especially concerning in light of allegations of violence, restrictions on union activities, and intimidation through ongoing spurious criminal charges against trade unionists. We share deep concern over the alleged beating and injuries suffered by trade union leader, Dmitri Senyavsky, and request more information on the status of the investigation. We also note with concern the ongoing criminal trial against union leader, Yerlan Baltabay. While we welcome the release from prison of Amin Eleusinov and Nurbek Kushakbaev in 2018, we continue to be concerned about the continued ban on their and Larisa Kharkova's participation in trade union activities, as well as the restriction on Kharkova's movement.

In July 2018, we were pleased to hear that the Federation of Trade Unions of Kazakhstan, together with the Government, ILO, and independent trade union representatives, began drafting legislative amendments that would bring Kazakhstan's legislation into compliance with the Convention, in accordance with the ILO road map for Kazakhstan. Unfortunately, since then, Kazakhstan has made little progress towards bringing this draft legislation into law. We welcome the Government's announcement of the new draft law in May 2019 and we encourage the Government to provide additional information to the Committee about the scope and status of the law, as well as to convey a copy of the draft law for review by the ILO and its Members.

To that end, we urge the Government to take the following necessary measures to help bring Kazakhstan into conformity with the Convention:

- fully investigate any acts of violence against union leaders;
- cease harassment and interference in the activities of workers and employers;
- bring before Parliament and adopt legislation to bring the Labour Code, the Law on Trade Unions, the Criminal Code, and the Law on the National Chamber of Entrepreneurs into compliance with the Convention.

Now is the time for the Government to take substantive actions toward implementing the recommendation of ILO supervisory bodies. We urge the Government to address immediately the outstanding freedom of association issues in the country in close cooperation with the ILO and the social partners.

Interpretation from Russian: Observer, ITUC (Mr KOSSHYGULOV) – I am speaking on behalf of the members of the KNPRK. It was liquidated in a case brought by the Government before the courts as were its member organizations. Its financial and legal documentation was seized and this is a clear violation of the fifth article of the Constitution of Kazakhstan and the Convention.

The courts have also decided to sentence leaders of trade unions: Larisa Kharkova; Amin Eleusinov; and Nurbek Kushakbaev who was awarded the Arthur Svensson prize for trade union activity. And, we have also seen members being fired or rather dismissed from their places at work in order to eliminate members of our trade union.

The Government is not implementing the measures agreed in the road map which was put together, together with the ILO. There is also a new civil case against Larisa Kharkova and a criminal case against Erlan Baltabai, the President of the Independent Trade Union of Oil and Energy Workers.

The Government is continuing to destroy independent trade unions. It is forcing employers to not sign collective agreements. It is intimidating waged workers and hampering the creation of new trade unions or joining trade unions on behalf of the KNPRK and its members' organizations. We call on the Committee to demand from the Government of Kazakhstan to immediately put into practice the road map worked together with the ILO high-level mission and to bring its legislation and practice into line with the Convention – also to put a stop to the administrative and criminal prosecution of trade union activists and stop interfering in the internal affairs of trade union organizations.

Interpretation from Chinese: **Government member, China (Ms LYU)** – The Chinese Government has closely followed the speech made by the Kazakhstani Government. We have noticed that by legislation, the Government has made a great effort in implementing the Convention including the extensive dialogue between the social partners as well as establishing the hotline. We have also noticed that, apart from listening carefully about the suggestions from the social partners and the ILO, Kazakhstan will continue to revise their legislation. China strongly supports the Kazakhstan’s dialogue with the social partners and would like to see a better implementation of the Convention. And we also would like to see more help from the ILO.

Worker member, United States (Mr FINNEGAN) – Canadian workers join us in our statement. A year ago, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) requested suspension of trade benefits granted to Kazakhstan by the United States Generalized System of Preferences. This action followed previous submissions regarding the persistent failure of Kazakhstan to protect and respect freedom of association. Since the brutal repression of an oil sector strike in 2011, killing at least 17 unionists and injuring dozens more, the Government has initiated, continued and accelerated a course of actions in legislation and in practice to deny workers the rights contained in the Convention. The criminalization of independent trade unions and efforts to eliminate all authentic unions has been a thorough and sustained programme of the Government since that strike.

Aside from the laws others have commented on and the forced deregistration of many independent unions and the KNPRK, employers and the Government have worked together to remove democratically elected union leaders and replace them with employer-designated leaders. This programme has also taken extreme actions to deny strike rights. Since 2012, authorities have used excessive force to contain strikes, resulting in at least 12 deaths and arrested and prosecuted outspoken oil workers and government critics, almost all of whom were convicted despite allegations that they were tortured.

As discussed in the Generalized System of Preferences (GSP) petitions, family members, fellow independent federation officials and individuals suspected of associating with KNPRK leader, Larissa Kharkova, report threats and acts of intimidation by the police and unknown individuals. Ms Kharkova, having served two years of a four-year sentence, remains restricted to Shymkent and has a strict curfew and constant surveillance.

Retaliation against the federation's Press Secretary, Lyudmila Ekzarkhova, escalated after the AFL-CIO filed its 2017 petition, included targeting, harassment and eventually forcible deportation of her husband. The Government has created a climate of fear for independent union leaders and all those who associate with them.

The Government has pursued a pattern of harassment and criminalization against the independent federation and against key sectoral unions that have demonstrated independence. In October 2018, police raided the home of Yerlan Baltabai, leader of the Union of Fuel and Energy Workers of the dissolved KNPRK. The Government began a series of police and legal actions against him very similar to those directed against Larissa Kharkova, in spite of the fact that her case was conducted without credible evidence and violated criminal procedure in Kazakhstan. On 28 February 2019, the Government liquidated Yerlan Baltabai's energy sector union for failing to change its by-laws to comply with the 2014 law on unions though the union tried five times to re-register since 2015 and was denied each time. Such aggression is faced by independent unions to eliminate those who refuse to bow to government pressure.

In February 2019, Kuspan Kosshigulov, who is here with us today, spoke on behalf of the independent unions of Kazakhstan at the December 2018 ITUC World Congress. He was attacked and detained on a train and taken to a police station for interrogation and examination with his 8 year-old child in the weeks after the Congress. Union and allies view this as a retaliation for Kuspan's activity at the ITUC Congress.

The Government must make meaningful changes to its legislation and end anti-union practices in order to ensure freedom of association according to the Convention.

Government member, Canada (Ms KOMORSKI) – Canada thanks the Government of Kazakhstan for the information provided today. Canada considers Kazakhstan an important partner in many areas of international cooperation, and looks forward to many more years of positive collaboration. We note that Kazakhstan continues to make significant efforts to improve the standards of living for its people, especially important at the momentous occasion of the transition of power from first President Nazarbayev to President Tokayev, elected this month. However, we note with deep concern that this is the fourth time in five years that the Government of Kazakhstan has been called to appear before this Committee due to non-compliance with the principles of the Convention, with little apparent progress on these issues to date. We have concerns about deteriorating respect for labour and human rights in the country, including incidences of violence against trade unionists, undue restrictions on the right of peaceful assembly, and the inability of workers and employers to join autonomous and independent organizations of their choosing.

Respect for freedom of association and the right to organize is fundamental. Strong and independent workers' and employers' organizations are also key in addressing economic and social challenges, and collectively can help ensure and sustain the well-being of both individuals and enterprises. Canada therefore urges the Government of Kazakhstan to implement the previous conclusions of this Committee without any further delay. In particular, we urge the Government to: (i) amend the Law on Trade Unions to ensure workers can freely establish and join trade unions of their choosing; (ii) effectively address the current difficulties in the trade union registration process; and (iii) amend the Law on the NCE to ensure employers' organizations in Kazakhstan can function independently and autonomously. All such law reforms should be consistent with international labour law and standards, including this Convention, and the result of genuine and effective tripartite dialogue.

We also urge the Government to cease and prohibit the harassment of trade union leaders and members, ensure any perpetrators of such actions are brought to justice in accordance with due process and the rule of law, and protect the rights of individuals engaged in peaceful protest. Finally, we encourage the Government to avail itself of ILO technical assistance in its efforts to ensure compliance with the principles of the Convention. Canada remains committed to working with the Government of Kazakhstan towards these ends as a partner.

Observer, IndustriALL Global Union (Mr IVANOV) – I am speaking on behalf of IndustriALL Global Union representing workers in mining, energy and manufacturing sectors throughout the world, including Kazakhstan. I have taken this floor to speak about inadmissible situation with workers' rights in Kazakhstan. In 2017 we raised the issue about consequences of adoption of the repressive Law on Trade Unions and the dissolution of the Confederation of Independent Trade Unions of the Republic of Kazakhstan. Now, we see that the same legislation is effectively used to prevent registration of this and other independent trade union organizations.

The Law on Trade Unions provides for a mandatory two-step registration that can take half a year. In the same time a local trade union upon registration must join a sector level union, and in their turn the sector level unions must become part of one particular national trade union centre.

The practice now is that unions are repeatedly denied registration at all levels by the judicial authorities if they do not plan to join the specific union centre, or if they previously happened to be members of independent unions. In the same time, members and activists of independent unions are legally prosecuted or punished with large fines for performing their union-related tasks.

Another matter we want to point out is Criminal Code, which is now widely used to limit workers' ability to strike through the charges in "incitement of interethnic discord". Lack of its clear definition creates large space for manipulation of workers' rights.

Prohibition of strike at workplace with harmful and dangerous conditions also requires a clearer definition. So far, because of this particular legislation, every strike of oil workers is under ban. Even if it is called by workers behind the gates of the enterprise and does not disrupt overall mode of the enterprise operation.

We consider this is a continuation of repression against workers stemming from the massacre in Zhanaozen, the oil town of Kazakhstan, where at least 16 people were killed and many more wounded in December 2011 in result of clashes with police. Independent trade union leaders are subject to repressions, some of them were convicted, or physically assaulted, while one of them, Erlan Baltabay, already mentioned a number of times here, head of the local trade union "Decent Work" for petrochemical industry workers is being trialled right now. And, Erlan attended this Conference in 2017 to speak about union rights violations in his country, and now this is clearly a retaliation to his participation.

Taking into consideration these manipulations with workers' rights, which constitute blatant violations of the Convention, in absence of any meaningful step from the Government of Kazakhstan to improve the situation, IndustriALL calls on to consider this case under special paragraph of the ILO Constitution.

Government member, India (Mr CHANDER) – India welcomes the delegation of the Government of Kazakhstan and thanks it for providing the latest update on the issue under consideration. India appreciates the commitment of the Government of Kazakhstan to fulfil its international labour obligations including those related to the Convention through progressive implementation of the relevant recommendations of the ILO and the willingness to constructively work with it.

We take positive note of the efforts being made by the Government of Kazakhstan in genuine consultation with its social partners to draft a law in this regard which essentially aims at simplification of the process of registration of trade unions and their empowerment in the spirit of social dialogue and tripartism and in accordance with their specific national context. We look forward to its enactment by the Parliament of Kazakhstan next month as planned for.

In fulfilling its labour-related obligations, 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 this regard. We take this opportunity to wish the Government of Kazakhstan all success in its endeavours.

Worker member, Australia (Mr ROBERTS) – Criminal sanctions against workers peacefully exercising their right to freedom of association are unacceptable and inconsistent with the Convention. So much is made clear in the conclusions of the Committee of Experts in the present case of Kazakhstan. Kazakhstan has a long and regrettable history of laws and practices that exhibit clear disregard for the right to freedom of association. In 2015, the UN Special Rapporteur extensively documented these problems.

The criminalization of industrial conduct in Kazakhstan includes the following. Firstly, the Criminal Code's article 174, which bans inciting social, national or other discord. Under these provisions, union lawyer, Natalia Sokolova, was sentenced to six years' imprisonment in August 2011. Her crime of incitement involved publicly calling for a change to the system for calculating workers' wages.

Secondly, the requirement to obtain preauthorization for public assemblies which can only be conducted in designated and often isolated areas. Participation in unauthorized assemblies can attract severe criminal sanctions, including imprisonment. The Criminal Code also prohibits providing "assistance" to "illegal" assemblies, including by "means of communication", thus criminalizing such simple acts as the use of social media to organize

workers. Section 402 of the Criminal Code, under which an incitement to continue a strike declared illegal by a court is punishable by up to three years' imprisonment.

In January 2017, Nurbek Kushakbaev, Deputy Chair of the KNPRK, was charged and detained for allegedly inciting the continuation of a hunger strike. The indictment against him included declassified material that showed that the phones of the union and its leaders had been tapped by the authorities since October 2015. Serious questions arose about whether Mr Kushakbaev received a fair trial. Journalists were not permitted to attend. Key witnesses gave inconsistent evidence, including one who changed her version of events overnight.

On 7 April 2017, Mr Kushakbaev was sentenced to two and a half years' imprisonment and ordered to pay the equivalent of more than €75,000 in compensation to the company involved and more than €2,400 in costs. The court also banned Mr Kushakbaev from engaging in "public activities" for two years following his sentence. He was eventually released on bail in May 2018 but the restrictions on his right to participate in union activities remain.

In its recent correspondence to this Committee, the Government of Kazakhstan seeks to reassure the Committee that processes are in train for the positive revision of the laws that have been identified as being inconsistent with international standards. Conspicuously absent from the list of measures that the Government provides, is any reference to these criminal laws – laws which are anathema to free-functioning trade unions and the right of Kazakhstani workers to enjoy what is supposed to be a constitutionally guaranteed right to freedom of association.

Interpretation from Russian: **Government member, Belarus (Mr NIKALAYENIA)**

– The delegation of the Republic of Belarus is grateful for the detailed information provided by the Government of Kazakhstan and the report of the Committee of Experts on its compliance with the Convention. We are also grateful for the efforts Kazakhstan has been

making to carry out its obligations vis-à-vis the Convention and the ILO. The Belarusian delegation assesses positively what the Government of Kazakhstan has done to implement the recommendations of the Committee of Experts. We welcome amendments to existing legislation in the country, particularly as they apply to the activity of trade unions. We would emphasize that this work is being done in accordance with the country's social partners. We appreciate the cooperation that Kazakhstan has had and continues to have with the International Labour Organization and we welcome the carrying out of an ILO mission to the country last year, and consultations which were held in April this year. We would like to express our support to the Government of Kazakhstan as it continues to act to implement the recommendations made to it by the ILO on the basis of the road map which it has worked out together with the Organization.

Membre travailleuse, France (M^{me} ALEXANDRE) – Le cas du Kazakhstan est malheureusement connu de notre assemblée, et il est important aussi de rappeler que derrière les cas dont nous discutons se trouvent des vies humaines, car il s'agit ici bien de cela: remettre l'humain au centre de nos préoccupations, et non pas le profit. Quelques minutes pour parler d'emprisonnements, de harcèlement, de menaces, d'intimidations, d'interrogatoires par la sécurité intérieure, c'est fort peu.

Que dire de la présidente de la KNPRK, M^{me} Larisa Kharkova, sous le coup d'une nouvelle inculpation en justice s'ajoutant aux peines déjà en cours de quatre ans de restriction de liberté de circulation, de cent heures de travaux forcés et d'une interdiction de cinq années dans toute position publique ou ONG?

Que dire des poursuites lancées en justice contre M. Yerlan Baltabay, leader du Syndicat sectoriel des travailleurs de l'énergie et du pétrole, dont les bureaux ont été méthodiquement fouillés et les documents syndicaux confisqués? Que dire des pressions psychologiques sur ces militants syndicaux et leurs familles?

Que dire de l'attaque physique commise le 10 novembre 2018 contre Dmitriy Senyavskiy, représentant du même syndicat dans la région de Karaganda, qui a été frappé à la tête, a subi plusieurs fractures du bras et d'autres blessures encore?

Ce ne sont que quelques exemples parmi tant d'autres. Le Kazakhstan fait partie des dix pays les pires au monde en matière de violations des droits des travailleurs selon l'index des droits de la CSI. Les travailleurs souhaitant s'affilier à un syndicat de leur choix font face à des pressions administratives, des menaces, des intimidations.

Nos conclusions en 2017 sur ce point précis recommandaient vivement au gouvernement du Kazakhstan de s'assurer que les militants syndicaux ne feraient pas face à des représailles; de permettre aux travailleurs d'exercer leur droit internationalement reconnu aux réunions pacifiques et de modifier la loi en ce sens; de mener une enquête sur l'usage de la violence et de la torture à Zhanazoen aux fins de représailles ou de dissuasion.

Il y aurait une longue liste de noms à faire devant cette assemblée tant les attaques sont nombreuses. Il semble aujourd'hui que le Kazakhstan mérite de notre commission et de la communauté internationale une attention toute particulière afin de mettre fin dans la pratique à ce mépris de la convention.

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. The Government of Kazakhstan has demonstrated efforts to strengthen and adapt its current legislative framework to bring it into line with ILO standards. We encourage the Government of Kazakhstan to continue to undertake necessary steps in this regard. We commend the positive and significant steps taken by the Government of Kazakhstan in consultation with the social partners, including its taking into account the observations of the Committee of Experts to amend its internal laws. Recent amendments made by the Government of Kazakhstan 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 should be acknowledged.

We believe that Kazakhstan, which respects the ILO and international labour standards and fulfils its obligations of submission of reports related to the ratified ILO Conventions, will continue to work with the ILO and social partners in the spirit of constructive cooperation.

Worker member, Norway (Mr JONSRUD) – I speak on behalf of the trade unions in the Nordic countries. As in the International Labour Conference in 2015 and 2017, we also this year express our deep concerns about continuous lack of progress bringing the Law on Trade Unions in Kazakhstan into full conformity with the Convention.

This year we are also deeply concerned about criminal charges against trade union activists, as well as provocations, beating and injuries suffered by trade union leaders of which the Government has done nothing to investigate the matters to bring the perpetrators to justice. In the road map adopted at the high-level tripartite mission in May 2018, Kazakhstan pledged to submit a new draft trade union law to Parliament in November 2018. This has not been done. Instead authorities have continued to shut down independent unions, denied registration to new unions, and exercise pressure, including prosecution, on those who dared to protest.

I wish to remind that the Arthur Svensson prize was awarded to the Kazakhstani independent unionists, who were sentenced in unfair trials to prison or limitation of freedoms. The Trade Union Law, seriously limits the ability of trade unions to define their own structure, put forward demands and realize their right to strike, as well as the problems regarding the union registration by the state bodies, reorganization and liquidation. The free exercise of the right to establish and join organizations implies the right of workers to freely decide whether to associate or become members of a higher-level trade union structure. This

is not the case in Kazakhstan as the law have high thresholds to establish a higher-level organization by making it almost impossible to form confederations.

In the 2017 conclusions, this Committee called on Kazakhstan to take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents.

The Justice Ministry in 2018 four times refused to register the KSPK – twice in August because the name was too similar to a previously registered union, and twice in September on minor technicalities. Nordic workers including judges, prison staff and firefighters, enjoy the right to form and join unions of their own choosing and to bargain collectively. This protects us from monopolization and secures plurality of trade unions in the Nordic countries. We urge the Government of Kazakhstan to ensure the right of workers to freely join and establish trade unions, and to organize their activities free of interference by the authorities. This must be ensured both in the law and practice.

Interpretation from Russian: Government member, Russian Federation (Mr ZHUKOV) – I would like to express my gratitude to the distinguished representative of the Government of Kazakhstan and the country's mission for having provided material, explanations and comments on the heart of this matter, and new information about what the State is doing to comply with its international obligations in respect of guaranteeing freedom of association.

Kazakhstan has been working steadily in order to improve its implementation of the Convention through constructive cooperation with the International Labour Organization.

We welcome the adoption of a road map which was agreed at the end of the ILO mission to Kazakhstan held in May last year. We also welcome steps the Government is taking to carry out that road map.

The Government has taken a comprehensive series of measures to bring its national law and practice fully into line with its obligations under the Convention. It is particularly important that this work is being done in close cooperation with the social partners, and strengthening the foundations for tripartite cooperation in accordance with the guidelines issued on the matter by the ILO.

After consultations held with the ILO and the social partners in April this year, amendments to the legislation will be sent to Parliament.

We are certain that this work will conclude successfully. We hope that the Committee will note the information provided by Kazakhstan with satisfaction, and having done so closed consideration of this case in the very near future.

Observador, Internacional de Servicios Públicos (Sr. RUBIANO) — Hablo en nombre de la Federación Sindical Europea de Servicios Públicos (EPSU, por sus siglas en inglés) y la ISP.

Quiero poner a conocimiento de la Comisión nuevas violaciones que se suman y corroboran las violaciones ya avisadas por la Comisión de Expertos. Nuestra afiliada en común, el Sindicato de Trabajadores de la Salud de Kazajstán viene siendo objeto de actos de injerencia en sus actividades, mientras que sus miembros han y siguen siendo víctimas de presiones y amenazas por parte de las autoridades y empleadores públicos, lo cual se traduce en violaciones al derecho de afiliarse libremente a las organizaciones a su elección.

Esta situación está directamente relacionada con dos hechos concurrentes, por una parte nuestra afiliada abandonó hace menos de dos años la Federación de Sindicatos de la República de Kazajstán; al mismo tiempo una nueva organización alternativa del sector salud, el Sindicato de trabajadores del sector de la salud (SENIM), fue establecida bajo el paraguas de la federación. Desde entonces ha habido por una parte un éxodo masivo de miembros de nuestro sindicato afiliado a la organización recién creada y al mismo tiempo ha habido un número muy alto de cancelaciones de registro de organizaciones de base de

nuestra afiliada. Esto no está sucediendo por causas naturales sino que es producto de la injerencia, presiones y amenazas mencionadas anteriormente. A modo de ejemplo, tenemos información en las regiones de Turkestán, Atirau y Kyzylorda, en un plazo de sólo dos semanas, las organizaciones de base de nuestra afiliada fueron completamente diezmadas. Tenemos además conocimiento que nuestra afiliada se ha quejado en vano ante la agencia para el servicio civil en la República de Kazajstán y las autoridades contra la corrupción.

También a modo de ejemplo concreto, la cancelación del registro de una organización de base en Astana fue objeto de una demanda, pero las decisiones del Tribunal de Primera Instancia y del Tribunal de Apelación suscitan dudas sobre su independencia, a pesar de que el caso de interferencia por parte de la administración del hospital está sobradamente documentado, ambas decisiones judiciales fueron en contra de los representantes sindicales.

Quiero recalcar que como resultado de estos hechos, desde marzo de 2018 ha habido un fuerte descenso en el número de organizaciones de base del Sindicato de Trabajadores de Kazajstán, de 926 a 288, el número de miembros del sindicato ha disminuido de 311 000 a 78 000, lo cual representa una pérdida del 68,9 por ciento y 75 por ciento respectivamente. Pedimos a la Comisión que considere debidamente estas violaciones y que las conclusiones en este caso contengan medidas específicas para pararlas.

Government member, Armenia (Ms PETROSYAN) – We welcome the delegation of Kazakhstan and thank it for the information provided today. We welcome the ratification of 24 ILO Conventions by the Government of Kazakhstan, obligations on which have been incorporated into the national legislation. We also welcome Kazakhstan for their endorsement of the report of the Global Commission on the Future of Work and note the convening of a high-level forum dedicated to the 100th anniversary of the ILO in May this year. We note that with the view to implement the road map on the implementation of ILO recommendations elaborated as a result of the ILO mission in May 2018 and in order to bring the national legislation into accordance with the standards of the Convention, Kazakhstan held various workshops and discussions, as well as drafted amendments to the

current legislation related to the activities of trade unions and entrepreneurs. While praising Kazakhstan for its efforts, we encourage it to continue its positive engagement.

Interpretation from German: Worker member, Germany (Ms HOFMANN) – “International trade union solidarity constitutes one of the fundamental objectives of any trade union movement” – to quote the Committee on Freedom of Association. Accordingly, the Committee considers that legislation prohibiting a national trade union from accepting financial aid from an international workers’ organization violates Article 5 of the Convention. However, this continues to be the case in Kazakhstan, whose Constitution and national legislation prohibit unions, inter alia, from receiving funding from international trade union organizations.

Already, in 1995, the Committee on Freedom of Association Case No. 1834, called on the Government to amend the Constitution and the law. Almost 25 years later, there is still no real change in sight. It is true that the now-announced amendment to the law, gives unions “the right to organize, hold events together with international organizations, and implement projects aimed at protection of rights and interests of workers in accordance with laws of the Republic of Kazakhstan”. However, this regulation does not contain any information on the question of financial support. Also, an amendment to article 5(4) of the Constitution has not been announced.

This is but one additional point on a long list of violations of ILO standards in which we have serious doubts about Kazakhstan’s willingness to actually bring about a national law and practice in line with its international obligations.

In March 2019, the European Parliament passed a resolution criticizing Kazakhstan for taking no concrete steps to actually implement the provisions of the ILO road map, or the recommendations of the United Nations Special Rapporteur on Freedom of Assembly and Association. The Parliament has therefore urged the Government to end the crackdown on

independent trade unions, stop the politically motivated prosecution of trade union leaders, and to bring national legislation into line with ILO standards.

Similarly, in March 2019, the UN Committee on Economic Social and Cultural Rights also calls, in its concluding remarks on the State report of Kazakhstan, not only for the implementation of the obligations under Article 8 of the UN Covenant and Economic Social and Cultural Rights, but also for the Obligations under the Convention as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Against this background therefore, we call on the Government to take the necessary steps to amend article 5(4) of the Constitution. In addition, we call upon the Government to prove to the Committee of Experts its compliance with the Convention on the basis of specific laws which are in force, and not merely announced. Furthermore, we demand special attention be given to this case of serious and persistent non-compliance.

Interpretation from Russian: **Government member, Uzbekistan (Mr TOSHMATOV)** – We would like to thank the Kazakhstani delegation for its exhaustive report and its compliance with the Convention. Our delegation welcomes the active cooperation of Kazakhstan with the ILO on this issue.

On the recommendation of the Committee, Kazakhstan accepted an ILO high-level mission recently. I would particularly stress that, together with that mission, the Government of Kazakhstan has drawn up a road map to implement its recommendations in order to bring its legislation into full compliance with the Convention.

Let me highlight the following points: the preparation of recommendations for all social partners concerning the receipt of financial aid and support are unions from international organizations; and of the measures to amend legislation regarding trade unions and employers as the result of wide-ranging discussion at national and international levels. We are sure that these measures indicate the attachment of Kazakhstan to creating working conditions which are dignified and deserve the recognition of this Committee.

Membre travailleur, Burkina Faso (M. BAZIE) – Ma voix se fait l'écho des voix de 14 centrales syndicales venant de 12 pays d'Afrique. Je tiens à féliciter le porte-parole du patronat qui a utilisé un propos dans son intervention que je répète ici: une question de bonne foi.

Il est vrai que le Kazakhstan a ratifié 24 conventions sur 189. La convention a été ratifiée en 2000 et nous constatons que, en cinq ans, cela fait quatre fois pratiquement que ce cas est en comparution à la barre ici. Ce sont des preuves de concordance qui indiquent qu'il n'y a pas de relation correcte entre le discours qui est tenu ici et les faits sur le terrain. De ce point de vue, il y a matière à interpeller notre Organisation internationale afin de faire en sorte que les tribunes aux niveaux desquelles les autorités viennent s'exprimer soient des tribunes respectées.

Il est nécessaire d'envisager la possibilité que les sanctions aillent au-delà des pays qui sont en retard de paiement (financier), et qu'il soit fait en sorte que des pays soient sanctionnés lorsque les engagements qu'ils ont pris ne sont pas appliqués. Il est inacceptable que l'on tienne des propos aux tribunes et que, sur le terrain, l'on fasse tout autre chose.

Premièrement, en ce qui concerne la violation des normes constatées par le Kazakhstan, nous nous référons tout simplement aux règles du jeu éditées en 2014, en page 15, qui stipulent que les pays ayant ratifié une convention s'engagent à l'appliquer en droit et en pratique, ce qui n'est pas fait. Deuxièmement, toujours dans le même document, en page 28, paragraphe 1, il est dit que le principe de la liberté syndicale est au cœur des valeurs de l'OIT. Mais quand on constate que l'on ratifie la convention en 2000 et que l'on fait de l'ingérence en violant l'article 2 de la même convention au niveau des syndicats de la santé, ce sont des éléments qui sont impardonnables.

De tels comportements conduisent à un manque de justice sociale qui peut être source de toute violence et de tout radicalisme.

Je conclus en disant que tous ceux qui violent la convention en croyant que c'est une façon d'affaiblir les organisations syndicales, ce sont eux-mêmes qui s'affaiblissent parce que, si les partenaires officiels sont affaiblis, il est clair que quand la misère deviendra grandissante et insupportable, d'autres voix vont naître et ce seront des voix radicales, exigeantes, à l'endroit desquelles il n'y aura pas de diplomatie, et c'est à ce moment-là que l'on va regretter le fait que nous n'ayons pas eu le courage véritablement de travailler au respect des normes internationales qui sont les piliers essentiels de l'OIT qui a été créée en 1919.

Government member, Tajikistan (Mr SAFAROV) – Tajikistan notes the efforts of Kazakhstan to implement the road map and the recommendations of the ILO, developed on the basis of the ILO mission in May 2018, as well as to bring national legislation into line with the provisions of the Convention.

In particular, we emphasize the following points:

- seminars and discussions were held with the participation of international experts on the implementation of ILO recommendations;
- a helpline has been established for registration and activities of trade unions;
- recommendations were developed on obtaining financial assistance from trade unions and international organizations.

We also note the consultations held on 30 April 2019 by the ILO secretariat to agree on draft amendments to the legislation and the intention of the Government of Kazakhstan to introduce the relevant legislation in July 2019. We hope for further constructive cooperation between Kazakhstan and the ILO on the implementation of the road map.

Interpretation from Russian: **Worker member, Russian Federation (Mr KRAVCHENKO)** – I am speaking on behalf of the Workers' delegation of the Russian Federation. Over the last few years, beginning at the 105th International Labour Conference,

our delegation has been expressing its concerns about the complicated procedure for the legal registration of unions in Kazakhstan. We have drawn the attention of this Committee to the fact that certain provisions of the legislation of Kazakhstan have not been in line with the basic principles of this Organization. Unfortunately, it turns out that our fears were justified. The situation has got seriously worse over the last couple of years. We have not seen any substantive changes to legislation in accordance with the road map that was agreed with the ILO. Instead, current laws have been used to wipe out one of the national unions, the FNPRK. Following that, several branch affiliates were forced to close because they had been trying to go through the re-registration process in accordance with the existing laws in Kazakhstan on unions. They came up against a lot of obstacles and dozens of times they were refused registration by the courts.

Similar obstacles are placed in the way of branch unions which were part of the former Confederation and which have made several attempts in the course of 2018 to register new, country-wide unions. There are many cases of local unions also being refused registration. Meanwhile, the State is using not only laws which have already been criticized, including by experts, but is exercising direct and systematic pressure on trade union activists and leaders. Three leaders of the Confederation have been convicted on spurious charges – the President, Larisa Kharkova and the leaders of the branch unions, Amin Eleusinov and Nurbek Kushakbaev. Their cases have not been heard yet but their freedoms have certainly been restricted. At the moment, a criminal case is being opened against another leader of the Confederation, Yerlan Baltabay, who spoke at the Committee two years ago on the case of Kazakhstan. Irrespective of the need to move the charges, the workers of the Russian Federation are convinced that the criminal persecution of these people and many other activists who are constantly being illegally pressured, physically beaten and persecuted through administrative measures, are being treated like this because they have legally been engaged in trade union activity.

In 2011, the authorities of Kazakhstan opened fire on a peaceful protest of workers in an Oil and Gas Factory. They were demanding an increase in wages. Sixteen people were killed and tens of activists were taken to court and prosecuted. We see, unfortunately, that the Republic of Kazakhstan does not appear to want to have any regard at all for its international obligations in respect of freedom of association. That is why the Workers' delegation of the Russian Federation demands that this case deserve a special paragraph.

Interpretation from Russian: Government representative – First of all I would like to convey my thanks to those who made suggestions and recommendations about this particular case involving Kazakhstan. We greatly appreciate the International Labour Organization and its assistance and the opinions of international employers' and workers' organizations. And, of course, we will make further efforts as we know we have to in order to make progress in Kazakhstan towards fully complying with the provisions of the Convention.

There are just a couple of comments I would like to make in response to what has been said.

Firstly on the functioning of employers' organizations. In 2018, we went through a transitional period and some organizations left the NCE. We are making further efforts, we have been and will continue to do so to clearly define in our legislation the roles and functions of employers' organizations and of the NCE. In order to make sure that we have clear parameters for what they are doing and the action they are taking, technical assistance from the International Labour Organization of course will be very helpful to us in this respect and we do hope that we will be able to receive more this year. That will help us to ensure that the provisions in the draft law which we have prepared and which is going to go to the Parliament very soon are appropriate.

We understand the concern that has been expressed about the use of force against members of unions. Whenever there is a case like this we will investigate it.

As to the charges of hooliganism against leaders of the demonstration that took place in 2011 and legal investigation of the trade union leader, Yerlan Baltabay, action was taken in accordance with the Criminal Procedures Code.

Workers have rights, unlimited rights to set up and join trade union organizations. There are a couple of exceptions: the fire service and the army, people working in prisons and those who are employed in the prisons and rehabilitation through labour camps in our country, as well as troops of the Internal Affairs Ministry. These people are not able to join trade unions.

According to the provisions of the Convention, it is up to national legislation to define the extent to which the guarantees provided in the Convention can be applied to the armed forces, etc. I would like to emphasize, once again, however, that civilians working in the prison system, in the army, that is people working on things like finances and the provision of healthcare, the legal services in human resources departments, they, according to the law are entitled to join trade unions and that right at the moment can be fully enjoyed without restriction.

I would like once again to take this opportunity to say that Kazakhstan has taken initiatives to amend its law on trade union activity, its labour code and other pieces of legislation. Over the next two months we will get down to work on bills to amend our legislation. Those will then go forward to the Parliament of Kazakhstan in the hope that the amendments and the new legislation can be adopted as soon as possible. Again, technical advice from experts here in the ILO will be more than welcome and we hope to benefit from that in the course of next year.

Moving on now to registration procedures for trade unions. Where there have been problems those will be thoroughly considered and investigated with the bodies responsible for registering trade unions which are part of the judiciary and therefore come under the Ministry of Justice.

I can assure you that Kazakhstan will make whatever efforts are necessary to ensure that the country is fully in compliance with its obligation under the Convention.

Employer members – The Employers thank the distinguished Government delegate for both the oral submissions provided this afternoon and evening, as well as the written information provided in respect of this case. We also thank those that intervened in the discussion that took place.

It seems to the Employers' group that now is the perfect opportunity to seize upon the goodwill that the Government has indicated that it has in respect of this process, and to see that translated into action. Therefore, taking into account the Government's submissions in this regard, the Employers urge the Government to review, in consultation with the social partners, the existing law and practice regarding re-registration of trade unions with a view to overcoming the existing obstacles in law; to prepare, in close consultation with the social partners, amendments to the provisions in question of the trade union law with a view to first, ensuring that workers can freely decide whether they are sector-based territorial or local trade union affiliates with a national trade union, and second, lowering the threshold for national sector-based trade unions.

In addition, the Employers' group is of the view that the Government should prepare, in close cooperation and social dialogue with the representative employers' and workers' organizations, the necessary amendments to this legislative framework that at this moment provides obstacles to the free association of both workers' and employers' organizations. As a part of this, the Employers' group urges the Government to prepare, in consultation with the representative employers' organizations, the amendments to the relevant regulations on the NCE in order to ensure that employers can establish and join organizations of their own choosing. While we have taken due note of the Government's submissions with respect to the transitional period in the NCE Law, we fear that the Government has missed the point in respect of the Employers' concerns. So to be clear, the point is that the Government has no legitimate role in the activities of free and autonomous employers' organizations. So, we

encourage the Government to engage in consultation with the most representative employers' organizations and to accept ILO technical assistance in this regard to ensure that the legislative framework allows the free and autonomous functioning of employers' organizations separate and independent from the Government.

Therefore, we welcome the Government's indications that the draft law is pending and will resolve these issues and we will be hopeful that that does in fact happen. We also encourage the Government to provide information on the legal status and the contents on its recommendation regarding authorization of workers' and employers' organizations to receive financial assistance from international workers' and employers' organizations. We note our deep concern that a number of these recommendations have been repeated for some time and so it is our firm expectation that this move forward without delay.

Membres travailleurs – Le Kazakhstan a fait l'objet d'un examen devant notre commission à de nombreuses reprises. Il a également récemment reçu une mission tripartite de haut niveau qui a eu l'occasion d'adresser un certain nombre de recommandations au gouvernement.

Nous invitons instamment le gouvernement à mettre pleinement en œuvre les recommandations qui lui ont été adressées par notre commission en 2015, 2016 et 2017. Le gouvernement veillera également à mettre en œuvre la feuille de route présentée à l'issue de la mission tripartite de haut niveau. L'ensemble de ces actions sera entrepris en étroite concertation avec l'ensemble des représentants des travailleurs et des employeurs.

Au vu des nouveaux actes violents perpétrés à l'encontre de dirigeants syndicaux, il nous semble fondamental en premier lieu de demander au gouvernement de tout mettre en œuvre en vue de faire cesser les actes de violence à l'égard des dirigeants et militants syndicaux. Cela passera notamment par la poursuite et la répression efficaces des auteurs de tels faits. La mise en place de peines suffisamment dissuasives est à cet égard indispensable.

Le gouvernement doit également cesser les manœuvres d'intimidation à l'égard des syndicalistes, notamment par la voie de poursuites judiciaires, lever les restrictions à leurs activités syndicales et abandonner toutes les charges retenues contre eux.

La procédure d'enregistrement pose encore de nombreux problèmes et en arrive dans les faits à restreindre la liberté d'association. Nous demandons au gouvernement d'apporter une réponse aux préoccupations exprimées par les partenaires sociaux par rapport aux problèmes récurrents que pose cette procédure d'enregistrement et d'engager un dialogue avec eux afin de prendre toutes les mesures nécessaires, notamment une modification en profondeur de la loi sur les organisations syndicales, afin de lever tous les obstacles légaux et de fait à l'exercice de la liberté d'association dans le pays.

Nous demandons avec insistance au gouvernement de procéder à l'enregistrement de toutes les organisations syndicales, et particulièrement à l'enregistrement de la KNPRK ou de son successeur, le KSPK.

De nombreuses ingérences dans l'organisation interne des organisations syndicales doivent encore être constatées au Kazakhstan. Nous demandons au gouvernement de s'abstenir de toute interférence dans les affaires internes des organisations syndicales.

L'obligation d'intégrer une organisation syndicale de niveau supérieur dans les six mois qui suivent l'enregistrement de l'organisation porte atteinte à la liberté de choix d'une organisation syndicale d'intégrer ou non une telle structure. Il convient dès lors de modifier la loi sur les syndicats afin de garantir le droit des travailleurs de décider librement s'ils souhaitent s'associer ou devenir membres d'une structure syndicale de niveau supérieur.

Plus fondamentalement, le gouvernement s'abstiendra de définir la structure des organisations syndicales, de limiter les catégories d'organisations syndicales et de se réserver le droit de décider si une organisation syndicale a le droit d'exister ou non. Les seuils d'affiliation exigés par la législation sont également trop élevés. Il convient dès lors de réduire ces seuils d'affiliation pour garantir une véritable liberté d'association.

Le gouvernement veillera également à garantir une indépendance pleine et entière des organisations d'employeurs en modifiant la loi sur la Chambre nationale des entrepreneurs.

Plus généralement, le gouvernement devra respecter les libertés d'actions collectives, y compris le droit de grève. A cet égard, le contenu de la notion d'activités industrielles dangereuses et la procédure afin de déterminer si une activité est bel et bien dangereuse ou non posent problème. La notion est encore trop floue et permet à un grand nombre d'activités de tomber sous cette notion. La procédure permet par ailleurs à une entreprise de décider elle-même si son activité est une activité industrielle dangereuse. Cela a pour effet de restreindre exagérément l'exercice du droit de grève. Nous avons bien noté la position du groupe des employeurs au sujet du droit de grève. Nous en profitons pour rappeler que le groupe des travailleurs estime que le droit de grève est bel et bien inclus dans la convention.

Les commentaires de la commission d'experts à cet égard sont donc tout à fait pertinents et nous y souscrivons totalement. En ce qui concerne la position du groupe gouvernemental, celui-ci a reconnu en 2015 que le droit de grève est lié à la liberté syndicale qui est un principe fondamental de l'OIT. Il a reconnu la nécessité de protéger le droit de grève en vue de garantir pleinement la liberté syndicale, et en particulier le droit d'organiser des activités dans le but de promouvoir et de protéger les intérêts des travailleurs.

J'en profite également pour remercier les gouvernements qui l'ont rappelé au cours de nos discussions. Je me limiterai à ce commentaire et me garderai d'interpréter la position exprimée par le groupe des gouvernements.

Il conviendrait dès lors de modifier le Code du travail en le rendant plus explicite quant aux installations considérées comme dangereuses et en révisant la procédure pour déterminer si une entreprise exerce de telles activités, sans que l'entreprise elle-même puisse en décider.

Nous demandons l'abrogation de l'article 402 du Code pénal qui incrimine l'incitation à poursuivre une grève déclarée illégale par le tribunal.

Nous avons appris que des recommandations ont été formulées à l'attention des organisations syndicales qui reçoivent un financement international. Il sera intéressant de pouvoir en prendre connaissance par écrit et nous demandons dès lors au gouvernement de les communiquer à la commission d'experts. Il n'en reste pas moins que les aspects législatifs de cette question restent problématiques afin d'assurer une totale conformité avec la convention. Nous demandons dès lors au gouvernement de modifier le cadre législatif relatif à ces financements internationaux en vue de garantir la liberté des partenaires sociaux de bénéficier de financements de la part de partenaires internationaux.

Afin de mettre en œuvre l'ensemble de ces recommandations, nous demandons au gouvernement de solliciter l'assistance technique du BIT.

Au vu des manquements graves, récurrents et persistants, malgré les nombreuses recommandations adressées à la suite des nombreux examens du cas du Kazakhstan devant notre commission, malgré les nombreuses initiatives du BIT en vue de mettre le Kazakhstan sur la voie de la conformité avec la convention et vu l'absence de progrès en la matière, nous demandons que les conclusions adoptées par notre commission soient incluses dans un paragraphe spécial.