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

Discussion by the Committee

Government representative – Before I begin my remarks, being elected as the Chairperson and Vice-Chairpersons of this Committee, I wish you every success in your endeavours to make this Committee's work more fruitful, in a spirit of constructive dialogue, worthy of the ILO's Centenary.

Since your Committee's last discussion of this case during the 100th Session of the International Labour Congress in 2011, there have been extensive developments in the trade union legislation of Turkey. A new Act on Trade Unions and Collective Labour Agreements (No. 6356) was enacted in 2012. The Act replaced two different acts: Acts Nos 2821 and 2822, which had drawn criticism from the Committee of Experts for many years and had become the subject of discussions in this Committee several times. The Act covers all those working under employment contract in both private and public sectors and regulates their right to organize and bargain collectively. The Act was the outcome of social dialogue and consensus between the parties that was, at times, not easy to achieve.

Another legislative change of great importance was the amendment to the Act No. 4688 on the Public Servants' Trade Unions in 2012, which changed its title as Public Servants' Trade Unions and Collective Agreement and introduced many far-reaching amendments to recognize public servants' rights to collective bargaining.

After outlining the last decade's developments, I would like to touch upon the allegations made by our social partners. As to the allegation of the TÜRK-İŞ that temporary workers employed by private employment agencies cannot enjoy trade union rights as they often change industry, I would like to emphasize that this form of contract is called a triangular employment contract in which a worker is employed by a temporary employment agency and works for a different employer. These workers have the right to organize in the branch activity in which the employment agency operates.

With regard to the allegation on the pressure exercised on the workers in public sector workplaces to join or not to join certain trade unions, I would like to point out that provisions guaranteeing the protection against anti-union discrimination exist in the Constitution, the

Penal Code and the labour legislation. Both unions and workers have administrative and judicial means to contest such action.

The actions of anti-union discrimination by any employer are considered as a crime, punishable with imprisonment up to three years under articles 118 and 135 of the Penal Code. In addition, labour legislation provides compensation for such cases at least the amount of one year's wage and, in case of dismissal, the possibility of reinstatement. As the public employers have also responsibility for fully respecting the law in discharging their duties, they are further liable under the public law.

With regard to civil liberties, I would like to reiterate that Turkey is a democratic country, upholding the rule of the law. In our country, no trade union has been closed and none of their officials were suspended or dismissed, due to their legitimate activities.

With the enactment of the Act No. 6356 and the substantial amendment of the Act No. 4688, the rate of unionization has steadily increased, reaching up to 22 per cent, public and private sectors combined.

In all democratic countries there is always a regulatory framework for organizing the meetings and demonstrations. Turkey is not the exception in this regard. In this context, when some trade union members transgress the law, destroy the public and private property and seek to impose their own rules during the meetings and demonstrations, then the security forces are naturally obliged to intervene to preserve the public safety. Indeed, by prior notification, marches and demonstrations can be organized.

How bizarre to discuss the lack of freedom in organizing meetings and demonstrations in a country where the last May Day celebrations were held by all trade unions and confederations in several cities around Turkey peacefully with enthusiastic participation.

We overcame such a dreadful and bloody coup attempt that we wish no country would experience. We lost 251 innocent citizens and thousands (2,391) of our people got wounded. The attempt for seizure of a democratic country was also condemned by the international community.

The allegations in the report concern the period of the state of emergency between July 2016 and July 2018 when our country tried to defend its national security and public safety. In this regard, closure of terror-related organizations which are organized under the guise of trade unions should not be exploited against Turkey in any platform. In Turkey, fundamental rights and freedoms, including trade union rights, are always and will be under the protection of the Constitution.

Apart from the right for everyone to seek judicial review against all actions and acts of the administration, every person may apply to the Constitutional Court alleging that the public power has violated any of his or her fundamental rights and the freedoms secured under the Constitution, which falls into the scope of the European Convention on Human Rights.

As requested by the Committee of Experts, I have brought with me to hand in to the secretariat several examples of the rulings of the Constitutional Court, which show that remedial channels are open and functioning well upon the invocation of trade unions or union members.

The trade unions and their members are expected to respect the law of the land as required by Article 8 of Convention No. 87. For example, the Constitutional Court emphasized this point in a ruling that "union membership must not necessarily lead the public officials to act contrary to the duties and responsibilities expected of them while

enjoying their constitutional rights”. Unfortunately, few of the trade union members are in fact linked to the terrorist organizations and use trade union activities to disguise their illegal acts. When these union members are prosecuted, it is reflected as if they were prosecuted on the grounds of trade union activities.

Since it has a direct bearing on the issue of civil liberties, I would like to inform your Committee that a Judicial Reform Strategy was launched on 30 May 2019 by the President of the Republic himself. The main aims of this reform include: strengthening the rule of law, protecting and promoting the rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial process, facilitating access to justice, strengthening the right to defence and efficiently protecting the right to trial in a reasonable time. A clear and measurable Action Plan will also be prepared and the Ministry of Justice will issue annual monitoring reports.

On article 15 of the Public Servants’ Trade Unions Act, I would like to indicate that in the determination of the public servants to be excluded from the scope of article 15, the second paragraph of Article 1 of the Labour Relations (Public Service) Convention, 1978 (No. 151), was taken into account. As you recall, this provision reads: “The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of highly confidential nature, shall be determined by the national laws or regulations”.

In principle, all public servants are entitled to benefit from the trade union rights, but due to the nature of their duties a limited number of the public servants are excluded from the scope. Restrictions are limited to senior public officials and to public servants in public services such as security and justice where disruption cannot be compensated.

On the issue of the strike suspension in the urban public transportation of the metropolitan municipalities and in the banking services, I would like to clarify that the power to suspend a strike in urban public transportation does not rest with the metropolitan municipalities.

Strike prohibition and strike suspension are two different things that are regulated in two separate articles of Act No. 6356. Services where strikes are prohibited are determined in article 62 of the Act while the possibility of strike suspension for 60 days in the above-mentioned services under certain conditions is regulated in article 63.

One should bear in mind that strike action during the collective bargaining process in Turkey is applied to the enterprise or workplace subject to the collective bargaining in its entirety and indefinitely. Therefore, when a strike action is harmful to the general health and the national security or the urban public transportation of metropolitan municipalities or economic and financial stability in banking services, the strike may be postponed for 60 days.

We are also transmitting a copy of Presidential Decree No. 5 concerning the State Supervisory Council, as requested by the Committee of Experts. Although we will be supplying more detailed information with our report, I would like to inform your Committee that there has never been an investigation or audit of a trade union organization or suspension of a trade union official by the State Supervisory Council in pursuance of Decree No. 5.

At this point, I would like to indicate that the Council’s power emanates from the provision of article 108 of the Constitution, which exists since the promulgation of the Constitution in 1982. Under this Constitutional provision, the Council had already power to conduct all kinds of examinations, inquiries and inspections at all public bodies and

organizations including public professional organizations and unions. I would like to clarify that the State Supervisory Council has no authority to dismiss or to suspend any trade union officials. This authority is only applied to the public officials and the Council has never interfered with the internal functioning of trade unions in its history.

In addition, dissolution of trade unions and suspension of their executives is a matter regulated by the trade union legislation. As it is a special legislation it cannot be overruled, neither by presidential decrees nor the laws of general nature. Under article 31 of the Trade Unions and Collective Labour Agreement, only the competent courts are empowered to dissolve the trade unions and, if need be, suspend the union executives responsible for unlawful acts.

I would like to point out that the Act on Trade Unions and Collective Labour Agreements was prepared with the active participation of the social partners and taking into account the provisions of the relevant ILO Conventions, the European Union Directives and Revised European Social Charter. It broadens the rights and freedoms of the trade unions and their representatives and guarantees their independence.

Article 29 and its relevant Regulation stipulate the principles for internal supervision and external audits of the trade unions. According to their provisions, administrative supervision and financial audits of the trade unions and their confederations shall be carried out by their supervisory boards in accordance with the provisions of their statutes and their general assembly decisions of these organizations themselves.

On the last point concerning dissolution of some trade unions after the coup attempt on 15 July 2016, I would like to emphasize that these trade unions had very strong connections to the FETÖ terrorist organization. As I mentioned before, in no way the dissolutions of these trade unions are related to or based on any of their legitimate trade union status or activities.

Nevertheless, I would like to indicate that all the dissolved trade unions and the dismissed public servants by a State of Emergency Decree have the right to apply to the Inquiry Commission for a review of the dissolution or dismissal. Even the one confederation and nine trade unions, dissolved due to their connection to the FETÖ terrorist organization, have applied to the Inquiry Commission.

I wish to underline that dismissal or dissolution directly through a decree with the force of law was a measure applied only during the state of emergency and all of the judicial recourse avenues are open against the decisions of the Inquiry Commission through the judicial system, including the Constitutional Court of Turkey and the European Court of Human Rights.

Finally, we will submit our report in 2019 with the detailed information on the developments and with the copies of the documents requested for further examination by the Committee. We hope that in drawing up the Committee's conclusions the revolutionary developments in Turkish trade union legislation should be acknowledged.

Worker members – We are examining the Turkish application of the Convention and this is a double-footnoted case and it is not surprising given the seriousness and persistence of violations of freedom of association which we fear now are now entrenched in the Government's attitude towards workers. The last time we examined the Turkish Government's application of the Convention was in 2011. At the time, the Committee expressed serious concerns over restrictions placed on the civil liberties of trade unions and their members and the arbitrary exclusion of trade unions from the exercise of the freedoms and rights guaranteed under the Convention.

Despite the time that has passed since then, the Committee of Experts report before us does, unfortunately, not point at any progress. On the contrary, the situation has significantly deteriorated in recent years with the persistence of arbitrary arrests and withdrawal of civil rights and the peaceful exercise of legitimate trade union activities. The Government has undertaken authoritarian measures to interfere in trade union affairs and impose heavy restrictions on the right to organize. We are in a situation in which it has become almost impossible for trade unions in Turkey to operate.

From 2016 in particular, the Government has justified continued violations of civil liberties under the guise of the state of emergency through associated decrees.

The law on meetings and demonstrations has consistently been used to prohibit numerous legitimate trade union activities. For example, in September 2018 about 600 workers were arrested in their dormitories at night for engaging in a protest against health and safety breaches at the construction site of the new Istanbul airport where, according to official figures, about 57 workers had died as a result of various health and safety violations. Though many of the workers have been released from pre-trial detention, about 31 workers are on bail under strict judicial control facing criminal prosecution.

As part of the attacks on independent trade unions, the authorities have also repeatedly dismissed workers for their trade union activities. More than 11,000 representatives and members of the Confederation of Public Employees Trade Union (KESK) were suspended from their jobs or sacked because of their trade union activities, under the pretext of national security and emergency powers by targeting peaceful trade union activity under very broad and vague criteria as terrorism. This stigmatization has created a clear, chilling effect on workers wishing to join trade unions. Trade unions are not terrorists, this climate of fear has to stop!

The absence of respect for civil liberties renders the concept of trade union rights meaningless. The Committee on Freedom of Association pointed out that national security and emergency measures do not justify a derogation from obligations under the Convention. The guarantee of the right to free speech, free assembly and trade union activities should never be considered as a threat to national security. The Government violated civil liberties because, allegedly, the trade unions and workers ignored or disrespected the requirements of the state of emergency or for engaging in political activities. In this regard, we reiterate the call of the Committee of Experts that the Government must take measures to “ensure a climate free from violence, pressure or threat of any kind so that workers fully and freely exercise their rights under the Convention”.

Secondly, we raise the restrictions placed on civil servants in joining and establishing trade unions. The Committee of Experts pointed out, and in particular, that section 15 of Act No. 4688 prevents public employees, magistrates and prison guards from exercising the right to freely join or form unions. While this provision has now been declared as unconstitutional, we note with concern that restrictions on civil servants continue to be imposed. The scope of Article 2 of the Convention recognizes the right of workers without distinction whatsoever to form or join organizations of their own choice. Despite this, the Government applied broad restrictions to join trade unions to one in six public employees, who are neither in the armed forces nor the police. This is a blatant breach of Article 2. The Government should urgently review this Decree relevant sections of Act No. 4688 including section 15 in consultation with the social partners.

Thirdly, we note the serious concern expressed by the Committee of Experts regarding excessive interference into trade union activities by public authorities contrary to Article 3 of the Convention. The principle of non-interference in trade union activities, programmes and administration protects the independence of action of trade unions including their right to take strike action.

The Committee of Experts highlights in particular that section 63(1) of Act No. 6356 does not conform with Article 3 of the Convention. This provision allows the Council of Ministers to suspend strikes for 60 days and unilaterally refer the underlying matters for compulsory arbitration if no agreement is reached after 60 days. While the law indicates that such a suspension should be limited to strikes that may be prejudicial to public health or national security, it has been interpreted in such a broad manner that strikes in non-essential services have also been effectively prohibited. These excessive powers to interfere in legitimate trade union activity were further boosted under Decree No. 678. This Decree allows the Council to postpone strikes in local transportation companies and banking institutions for 60 days contrary to an earlier constitutional court ruling.

In addition, the Workers' group has serious concern over the adoption of Decree No. 5, which further exposes trade unions to undue interferences by the public authorities. Under the Decree, the State Supervisory Council – an outfit of the Office of the President – has power to investigate and audit trade unions and other associations at any given time. With this power, all documents and activities of trade unions and other associations will come under investigation without safeguards and guarantees provided by a prior judicial process. The effect is that unions are restricted and impeded from freely and fully exercising the right to pursue their legitimate activities without fear. Unions are forced to self-censor their activities and programmes in order not to suffer continued, politically motivated and malicious investigations and audits. This is an interference and a disguised form of prior authorization contrary to the Convention. This is a further example that Turkey has become a state of fear and oppression.

Any law that gives the authorities direct or indirect powers of control over the internal functioning of unions, for example by going beyond the obligation of the union to submit annual financial reports, is incompatible with the Convention. The Government must provide details of any investigations and/or audits it has conducted on unions to the Committee of Experts, including the outcome of these investigations and audits as well as dismissals or sanctions inflicted to trade unions and their leaders.

Finally, we are deeply concerned about the Turkish Government's arbitrary dissolution of trade unions in violation of Article 4 of the Convention. Decree No. 667 provides that trade unions found in connection, communication or adherence to groups and organizations threatening national security or terrorism will be banned. The law makes no distinction between the trade union as an organization with an objective public purpose and individual actors. In effect, the Decree holds all members of the trade union guilty by association with the consequence of a close down of the union.

In accordance with Article 4 of the Convention, workers' organizations should not be liable to be dissolved or suspended by the government. The supervisory bodies have held that dissolving or suspending a trade union organization is the extreme form of interference by authorities in the internal activities of workers' organizations. As such, all necessary safeguards and guarantees must accompany any action in this regard. We regret that no safeguards nor guarantees have been undertaken within the framework of this Decree. Although the Government has set up an Inquiry Commission to review its actions after the fact, including the dissolutions, the process does not enjoy the trust of victims and trade unions due the manner in which it was constituted and the results of the processes so far. It is marred by a lack of institutional independence, long waiting periods, an absence of safeguards allowing individuals to rebut allegations and weak evidence cited in decisions to uphold dismissals.

To conclude, we highlight that a fundamental change is needed to effect the realization of the Convention for workers in Turkey. The source of real or perceived security challenges do not lie within free and independent trade unions and the guarantee of basic rights that define a democracy. Indeed, if we have learned anything in 100 years of the ILO it is that

the guarantee of the right to freedom of association is indispensable for social justice and peace.

Employer members – The Employers’ group would begin by thanking the Government for its submission today. We make special note of the Government’s stated commitment to submit its 2019 report with detailed information and provide copies of the documents requested for further examination by the Committee of Experts. The information provided by the Government today is very important to allow us to better understand the manner in which Turkey is applying the Convention, the challenges it is facing and the ways it has found to overcome some of those challenges.

In looking at the history of this case, it is important to highlight that Turkey ratified the Convention in 1993. The Committee has discussed Turkey’s compliance with this Convention six times since 1997–2011, and we note that the Committee of Experts have made a total of 19 observations on Turkey’s application of this Convention in past years. We also note that Turkey received ILO technical assistance in the framework of the Improving Social Dialogue in Working Life EU Project, which was aimed at increasing the capacity of social partners and relevant public institutions at all levels including through numerous training activities on international labour standards in 2016, 2017 and 2018.

The issues in the present case which was double footnoted by the Committee of Experts this year concerned four main issues which we will discuss each separately.

The first issue identified by the Committee of Experts was the issue of civil liberties. First we note that the International Trade Union Confederation (ITUC) and Turkish trade unions allege continued infringement of civil liberties, such as prohibitions of demonstrations and press statements of Turkish trade unions, arrests of union trade members and officials, and withdrawal of passports of dismissed trade union executives.

We note that in the Committee of Experts’ observation the Government refers to situations where the requirements where the state of emergency were persistently ignored or disrespected, where unlawful activities took place. For example, open-air activities in violation of Law No. 2911, or where civil servants were involved in politics in violation of their status. The Government also indicates that domestic administrative or judicial methods of remedy are available against all acts of the administration. We thank the information that the Government provided today in this respect as it provides some additional context to be considered.

The Employers’ group believes that effective respect for civil liberties of workers and employers is the very basis for the exercise of freedom of association under the Convention. The Employers therefore encourage the Government to give to the Administration all instructions that are necessary to ensure that violations of civil liberties, which are the basis for freedom of association protected by the Convention, will not occur in the future. The Government should also provide information of any outcomes of administrative and judicial remedial channels invoked by union members.

Turning to the second issue, the right of workers without distinction to establish and join organizations as included in Article 2 of the Convention. Moving to the second issue concerning the right of workers to establish and join organizations, we note that according to section 15 of Act No. 4688 as amended in 2012, senior public employees, magistrates and prison guards are excluded from the right to organize. In a 2015 judgment, we understand that the Constitutional Court repealed one part of this restriction, namely section 15. As regarding the personnel of the Administrative Organization of Turkish Grand National Assembly, we understand that the other restrictions in section 15 remain in force.

It is our understanding that the Government seeks to justify these restrictions by taking the position that they are limited to those public services where disruption cannot be compensated, such as insecurity, justice and high-level civil servants.

The Employers would take this opportunity to highlight that the right to establish and join organizations under Article 2 of the Convention does not give the right to disruption or a right to strike. In other words, in our view, the Government would not be hindered by the Convention to restrict or exclude the right to strike for senior public employees, magistrates or prison guards. We have emphasized this Employers' view on many occasions. It appears therefore that the apprehensions of the Government are therefore not justified and it should not exclude these workers or public servants from the right to organize. The Employers therefore call upon the Government to make the necessary changes to the law, in particular section 15 of Act No. 4688, to ensure that all public servants have the right to organize. Only the armed forces and the police may be exempted in accordance with the Convention.

On the third issue concerning the right of workers' organizations to organize their activities and formulate their programme. The Committee of Experts' observations concern in essence legal provisions that enable a suspension of strikes under certain conditions. At this moment the Employers would simply comment on this point that in their view these issues fall outside of the scope of the Convention. Also, the Government group has expressed the view, in its statement in 2015, that the right to strike is regulated at national level. This is consistent with the Employers understanding that these issues can be regulated at national level.

The Employers want to take this opportunity to register its opinion that the Committee on Freedom of Association does not have the competence to supervise compliance with the Convention. Its mandate is strictly to examine alleged infringements of principles of freedom of association and the effective recognition of the right to collective bargaining enshrined in the ILO Constitution, the Declaration of Philadelphia and as expressed by the 1970 ILO resolution.

Therefore the Employers reiterate that in the absence of any rules on industrial action in the Convention, the Government may set and apply its own rules in national law and practice to the issue of industrial action. The explanations and requests made by the Committee of Experts on this issue should be taken within that context. Moreover, we note that according to an ITUC allegation, Decree No. 5 of July 2018, enables the State Supervisory Counsel (DKK), an institution which is directly accountable to the Office of the President to investigate and audit as well as remove or change the leadership of trade unions and certain other associations. In this respect, we note that the Government explained in its report that the DKK only seeks to ensure the lawfulness, regular and efficient functioning and improvement of the administration, and that there is no intention to interfere with the internal functioning of trade unions.

We understand from the Government's submission that the competence to dismiss or suspend trade union administrators only apply to public servants. In this regard, the Employers note that it is not for government agencies to take measures to ensure regular and efficient functioning of the administration of trade unions. That is in fact a matter that falls within the autonomy of trade unions which is protected by Article 2 of the Convention.

Any competence by the DKK, whatever the objectives are to investigate or audit trade unions or employers' organizations other than simply requesting them to submit annual financial reports, as Mr Leemans pointed out, would not be in line with the Convention. We request that the Government provide the Committee of Experts with a copy of Decree No. 5, as well as information on its application in practice, in order to enable a proper examination of its compatibility with the Convention, particularly in respect of the right of trade unions

and employers' organizations to organize their activities without interference from government authorities.

Finally, turning to the last issue on the discussion of the dissolution of trade unions, KHK No. 667 provides that trade unions can be banned on the suggestion of a commission and approval of the Minister concerned when they are found to be in connection, communication or adherence to formations threatening national security or to terrorist organizations. According to allegations made by the Turkish trade union, the Confederation of Public Employees Trade Unions of Turkey (DISK), 19 affiliated trade unions composing 52,000 members were closed down for being in connection with a terrorist organization, Parallel State Structure. An Inquiry Commission has been established in the meantime, which is receiving complaints against the dissolution of trade unions. Contrary to its decisions, legal recourse to the administrative courts is possible. While the Government did not provide its perspective on these allegations to the Committee of Experts in 2018, it has shared some information on this issue in its presentation today. We understand that the Government has advised that the dissolution of trade unions is a matter regulated by the trade union legislation and that, under article 31 of the Trade Unions and Collective Labour Agreement Act, only the competent courts are empowered to dissolve trade unions. While we appreciate the information shared by the Government today, the Employers' group does call upon the Government to provide this detailed information in this regard in relation to this issue and related circumstances regarding the dissolution of any trade unions in all cases to the Committee of Experts, as well as information regarding the re-establishment of trade unions as a result of decisions made by the Inquiry Commission or by the administrative courts. This information would allow a more proper and fulsome understanding of this issue. The Employers' group thanks the Government for its submission today and we take this moment to impress upon the Government how important it is that it is encouraged to take measures to fully comply with the Convention based on the comments before you.

Employer member, Turkey – I would like to present the opinions and suggestions of Turkish employers with respect to the subject matter. Regarding the Convention, the Committee of Experts firstly takes into consideration the complaints filed by different workers' organizations about civil liberties. Considering the observations of the Committee of Experts on this matter, we, as Turkish employers, deem it necessary to inform this Committee on certain issues.

The first issue is that the right to personal liberty and security is regulated in article 19 of the Constitution of the Republic of Turkey and that the circumstances and conditions under which the said rights might be restricted is also specified in the same article. Thus, by means of such legal measures, the creation and assurance of an environment that will enable workers and employers to exercise their rights arising from the Convention, fully and freely without being subject to violence, oppression and threat, is ensured. As Turkish employers, we believe that the realization of such an environment is a necessary condition of the Convention and Turkey's working life ecosystem is perfectly in line with ILO standards.

The Committee of Experts' observations about Turkey within the scope of Article 2 of the Convention focus on rendering article 15 of the Civil Servants Unions Act compatible with the Convention. As Turkish employers, we believe that all employees, except for a few exceptions, working in the public sector should enjoy the right to organize. Having few exceptions is not only the case for Turkey, it is a kind of conventional approach for the majority of the countries.

Indeed, Convention No. 151, which is another ILO Convention to which Turkey is a party, also leaves the authority to determine the extent of application for the syndicate assurances about senior level public officials, performing top secret duties, members of the armed forces and members of police forces to the national legislation of the member countries. However, persons referred to in article 15 of Act No. 4688 do not hold the status

of “public employee, namely the workers working at the public sector”, but hold that of “public official” namely the civil servants. Legally, these persons are not at the status of “worker”, but at that of “public servants”. Accordingly, we have not been able to understand on what reasoning the Committee of Experts wants to compare the provision of a national law that applies to civil servants with those of a Convention that is solely devoted to workers.

As a matter of fact, given the fact that there is a specific Convention provision related to the very matter and that the provisions of the national legislation complies with this provision, making an evaluation under Article 2 of Convention No. 87 is inappropriate. While Convention No. 87 means that workers/public servants from these groups can set up and join their own autonomous organizations, it does not mean that workers/public servants from these groups or their organizations have a right to collective bargaining or even a right to strike under this Convention.

The Committee of Experts’ observations about Turkey, under Article 3 of the Convention, is mainly based on strike postponements and their execution. However, the Committee of Experts makes an observation on a matter on which it is not authorized. In fact, the Convention does not mention about the word strike or right to strike; nor does it guarantee that right by any means. Hence, our Employers’ group also is of the opinion that the Committee of Experts is not authorized to comment on the provisions about the postponement or the limitation of the right to strike acknowledged by national legislation. Namely, the power to interpret ILO Conventions belongs solely to the International Court of Justice.

In line with the Government group position, the right to strike is regulated at national law in Turkey. There exist laws in Turkey that determine the scope of the right to strike in line with the national industrial relations system. These laws have been adopted in a regular and democratic process. The application of these laws can be challenged before the Constitutional Court, which has been done on a number of occasions.

Another point regarding the Committee of Experts’ observations on Turkey about Article 3 of the Convention is the claim that the State Supervisory Council’s power of auditing and investigating unions does not comply with the provisions of the Convention. The power of the State to conduct administrative and financial inspection of the employers’ and workers’ organizations provided for in article 52 of the Constitution of the Republic of Turkey was repealed by Article 3 of Act No. 4121. In parallel to this amendment, article 29, Unions and Collective Labour Agreement Act No. 6356, stipulates that the supervision of the unions shall be conducted by their own supervisory bodies and the financial audit shall be done by certified public accountants.

Thus, article 108, Constitution of Turkey, regulates the State Supervisory Council. It carries out its examinations with the purpose of ensuring the lawfulness, regular and efficient functioning and improvement of the administration. The claim that the State Supervisory Council has the power to dismiss or change the trade union administrations, which is among the allegations of the ITUC, is baseless, since the power of dismissal or suspension is an arrangement intended only for the public servants. In this context, Presidential Decree No. 5 does not impose any regulation outside the framework laid down in the Constitution in relation to the freedom of association and the right to organize.

Another point regarding the Committee of Experts’ observations on Turkey about Article 4 of the Convention is the dissolution of trade unions.

As it will be recalled, not long ago, an attempt to overthrow the Turkish Government was under way; 251 were killed, and more than 2,000 people wounded as a result of the attempted coup. The Turkish employers condemn any terrorist attack or unconstitutional effort to seize power and overthrow democracy. Namely, after the attempted coup of 15 July

2016, an Inquiry Commission has been established that receives applications against the dissolution of trade unions during the state of emergency and whose decisions are appealable before administrative courts of Ankara. The grounds for the dissolution of trade unions can be examined by the administrative courts in Turkey when applications are made, which is a due and effective recourse by law.

Finally, I want to emphasize that the Turkish employers give the utmost priority to the ILO's supervisory system. In our view, the credibility and transparency must be respected within the Committee with a view to enable a high level of compliance to the international labour standards.

Worker member, Turkey – Workers right to join a union with their free will is under the guarantee of article 51 of our Constitution and the 19th article of the Trade Unions and Collective Agreement Act No. 6356.

The 31st article of the Trade Union Act 2821 which was in force before Act No. 6356 was foreseeing that employing a worker cannot be linked to a specific union membership. Imprisonment and a judicial fine was foreseen in case of the violation of this provision. However, new Act No. 6356 foresees only a judicial fine. In fact, article 118 of the Turkish Penal Code also foresees imprisonment in case of the workers enforcement to join or resign from their union. But since it is up to two years, the imprisonment decision may result with the suspension of the pronouncement of the judgment. Therefore, the sanctions in case of the violations of organizing rights or current legislation should be strengthened. The report of the Committee of Experts includes a variety of situations in which the certificate of competence to bargain collectively may be withdrawn by the authorities. Particularly, the designation of industrial branches or the competencies and long trial periods create concerns.

We acknowledge the improvements made in legislation since we have been discussing the case at the Committee. However, we still face the dismissals because of joining unions particularly in the private sector. Unions and workers solving all procedural problems are this time facing the pressure applied by the employers. They are forced to resign from their unions or join unions designated by their employers.

We need legal sanctions to protect the organizing rights of workers and providing them the required circumstances free from any pressure or threats necessitates a mentality change towards an understanding of tackling problems with social dialogue.

In accordance with our prior requests and case discussions at the Committee, thresholds were negotiated with the Government and the national threshold was decreased from 10 to 1 per cent. This was a result of the consensus achieved after the negotiations among the parties. This was also shared in details with the previous missions from the Office.

As a result of this decrease at the national threshold and the e-state membership application replacing the prior high-cost notary procedure, progress has been achieved in regard to unionization rates. However, as mentioned in the Committee of Experts report, we previously indicated that it is not always easy to reach the 50 per cent workplace and 40 per cent enterprise threshold levels in the environment of increasing flexible employment systems noting that we are in favour of “One competent union at one workplace” principle.

As mentioned in the Committee of Experts report, Act No. 6356 provides that strikes can be postponed for 60 days with a decree due to the reason of public health or national security. The Government should ensure that this provision is not abused. Approximately 800,000 subcontracting workers are employed at the related workplaces through Decree No. 696 in 2018. The Government should also ensure that those workers transferred from subcontracting companies are fully benefiting from their collective bargaining and organizing rights.

As it is indicated in the report of the Committee of Experts, there was a situation of acute crises in Turkey after the failed coup attempt. The FETÖ terrorist organization behind the coup aimed to suppress all democratic and constitutional institutions and overthrow the Turkish Government and it is responsible for the deaths of 251 Turkish citizens including our six members and injury of more than 2,300 civilians. Regarding this issue, the administrative and judicial channels should continue to be open and current commissions should rapidly finalize their work.

As one of the countries benefiting very much from ILO and its tripartite structure we would like the Government to find solutions to all these issues in close consultation and cooperation with the social partners.

Another Worker member, Turkey – I would like to concentrate on public workers' issues. Turkey has approved Convention No. 87 and many other Conventions in the early 1990s. Our Confederation *Turkiye Kamu-Sen* (Turkish Public Workers' Trade Unions Confederation) was established in 1992 when there was not any legislative base including constitutional for civil servants to be a member of any union. Because, at the mentioned time, public workers trade union rights were banned for a public worker; to be a member of a trade union was banned until 2001 when the first Public Workers Law Act No. 4688 was adopted.

From 2001 and 2012, public workers trade unions acted as an ordinary organization rather than a trade union. This was because of the limited rights regulated in the Constitution and in the law. In 2010, some articles of the Constitution including the articles related to trade union issues were amended in a referendum and depending on those amendments some articles of the public workers trade union law was changed two years after that mentioned referendum.

Of course public workers' trade unions gained some improvements in public workers trade unionism but there are still many limitations for public workers in terms of freedom of association in relation with the Convention in practice. In spite of having this same international and national legislation basis there are still 12 handicaps for public workers trade union rights comparing with the labour trade unions rights.

In this time period Turkey had faced a large amount of immigrants and terrorist attempts. The most important one was the failed coup attempt prevented in seven hours by the security forces, Government, trade unions, many other democratic institutions and a very large part of society. The mentioned coup attempt was organised by the FETÖ terrorist group organization. All those attempts were targeting to destroy Turkey's economic and social stability.

Especially after 15 July 2016, many public workers were investigated and big amounts of them were dismissed. In that extraordinary time period, black and white mixed for a while. Today everything is getting normalized in Turkey and an Inquiry Committee consisting of seven members coming from mostly high courts was established to examine this issue. They should work hard and solve this problem in a short time for the people who may be innocent.

Finally, Turkey was discussed more than ten times in this Committee for different reasons since 2003. Last some years it was received high-level mission of the ILO. Some years Turkey was supposed to submit some recovery report to the Committee.

These days we are more hopeful because we have a new and a very young Minister of Labour. The Minister and her team know the problems and they are aware of the matters. In legislative base, we have all types of social dialogue mechanisms which need to be implemented in practice. The ILO is setting a Centenary vision for decent and peaceful work

life. So as Turkey, we have to put the same vision for our next future to solve all problems including freedom of association.

Government member, Romania – I am speaking on behalf of the European Union and its Member States. The European Free Trade Association (EFTA) country Norway, member of the European Economic Area, aligns itself with this statement. We are committed to the promotion of universal ratification and implementation of the eight fundamental Conventions as part of our Strategic Framework on Human Rights and we attach the highest importance to freedom of association and the right to collective bargaining. Compliance with ILO Conventions Nos 87 and 98 is essential in this respect. Turkey is a key partner for the European Union and a candidate country. During the last EU–Turkey Association Council held in March 2019 in Brussels, the EU reaffirmed the importance of the relations between the EU and Turkey. The EU and its Member States immediately and strongly condemned the 15 July 2016 coup attempt. However, three years later, and despite the lifting of the state of emergency, we remain concerned over the continuing and deeply worrying situation in the areas of fundamental rights and rule of law, and the pressure faced by civil society, notably in the face of widespread arrests, and recurrent bans on demonstrations and other types of gatherings. We also underline the importance of ensuring that the Inquiry Commission on the State of Emergency Measures represents an effective remedy for those unjustly affected by the broad scale and collective nature of the measures taken in the aftermath of the coup attempt. With regard to the present case before us, which relates to the Convention on freedom of association and collective bargaining, we would like to stress that an environment conducive to social dialogue and trust between employers, workers and governments is essential for social and economic stability. We express concern over recent arrests of union members and officials during protests (including against working and living conditions in the new Istanbul airport site construction), as well as the withdrawal of passports of trade union executives and other restrictions to civil liberties such as the prohibition of demonstrations and press statements. We understand that trials are still under way and hope that the ruling of the courts will be based on the rule of law and respect of Conventions Nos 87 and 98 that Turkey has ratified. Workers should have the right to unionize and join the organizations of their own choosing, including in the public sector. We duly take note of the allegations from the KESK that restrictions still impact one in six civil servants in Turkey. The Committee of Experts in previous comments had already requested the Government to review section 15 of Act No. 4688 as amended. We therefore call on the Government to take the necessary measures to amend this law so as to lift the restrictions on the right to unionize which are not in conformity with the Convention and ensure that all civil servants, including those working in the justice and security sectors, as well as high-level civil servants, have the right to form and join trade unions. We also highlight that workers should be free to join the trade unions of their own choosing and that they should not be subject to any pressure from their employer in this respect. Moreover, government authorities should not interfere in the programme and organization of trade unions. According to the Committee of Experts report, the State Supervisory Council – an institution directly accountable to the office of the President – has been attributed with very wide powers, such as investigating and ensuring audits of trade union and professional organization, at any given time. According to the ITUC, this Council has also the power to remove their management. The Committee of Experts report recalls that these powers should not go beyond requesting the submission of annual financial reports and in any case not interfere with the internal functioning of the unions, otherwise it would be incompatible with the Convention. We would therefore like to request further information on the role and activities carried out by the State Supervisory Council, the investigations already undertaken under its auspices and their outcomes. We also express our concern that section 63 of Act No. 6356 and KHK No. 678 are applied in a manner that unduly infringed with the right of workers organizations to organize their activities free from government interference. The Committee of Experts recalls that a series of strike suspensions took place based on these texts and despite the fact that they had been ruled as unconstitutional by the Constitutional

Court. We would like to request more information from the Government on the application of these two laws. Finally, we would like to highlight the very dire and uncertain situation of a large number of trade union members dismissed in the public sector as well as trade unions closed down in the coup attempt aftermath. It is crucial to ensure that the Inquiry Commission is accessible to all organizations and all trade union members that desire their review and that the Commission, and the administrative courts that review its decisions on appeal, carefully examine the grounds for the dissolution of trade unions and dismissals. We would be interested in having more information on the work of this Commission and in particular the number of applications submitted by the dissolved trade unions, the number of cases considered by the Commission and the outcome of their examination. Regarding trade unionists dismissed in the public sector, we are concerned by the large backlog of unsolved cases for those affected by measures under the state of emergency and a very low level of reinstatements (7.5 per cent as of May 2019). We urge the Government of Turkey to swiftly take the necessary steps to ensure a climate free from violence, discrimination, pressure or threats so that all workers and employers are able to exercise their rights under the Convention in the country. The EU and its Member States will continue to cooperate with Turkey and closely monitor the situation.

Interpretation from Arabic: Government member, Qatar – The Turkish Constitution guarantees equality between all citizens before the law without any discrimination on the basis of language, race, skin colour, confession, etc. The Government has taken measures following the attempted coup. To our mind, these provisions were not intended, they were not against the trade unions, they were simply measures against those who had prepared that military coup.

We have noted the number of unions has increased over recent years between 2013 and 2019. In fact the number of unions has tripled. That shows clearly that the Turkish Government has created a climate which is conducive to unions which guarantees and protects the rights of their members. What is more, the Turkish Constitution has recognized all fundamental freedoms, including the freedom to organize.

Our country considers that Turkey is striving for social justice as required by our Organization. So we would ask the Committee to evaluate the case of Turkey bearing in mind what I have just set out. We support the statement by Turkey on this and we would ask the Committee to take into account this statement of the Government of Turkey when it comes to its conclusions.

Interprétation du turc: Observateur, Confédération syndicale internationale (CSI) – Je tiens à exprimer mon souhait pour que nos réunions apportent des solutions aux problèmes rencontrés par les travailleurs, et pour cela je vais dresser un bilan général des événements survenus dans le cadre de la convention.

Le gouvernement soutient ouvertement les confédérations et les syndicats affiliés qui sont dans la même ligne politique que la sienne. Bien que cela soit contraire aux normes de l'OIT, le gouvernement adopte une pratique discriminatoire selon les confédérations et les syndicats. La discrimination syndicale s'étend de la promotion à l'affectation à une place du système de convention collective ainsi qu'aux nominations dans le secteur public, par exemple lors des examens de promotion. La décision est prise non en fonction des connaissances et de la compétence des employés dans le secteur public, mais en fonction du syndicat auquel ils sont affiliés.

Les nouvelles mesures qui sont entrées en vigueur lors de l'état d'urgence sont devenues permanentes et, ainsi, le droit d'association a pris un sérieux coup. Avec les décrets ayant force de loi promulgués pendant l'état d'urgence, environ 130 000 travailleurs du secteur public ont été licenciés sans aucune enquête ni procédure judiciaire, et ce sans aucune possibilité de défense. A l'heure actuelle, 4 510 travailleurs publics membres de syndicats

affiliés aux caisses sont toujours démis de leurs fonctions. Les sanctions de licenciement durant la période de l'état d'urgence étaient uniquement fondées sur l'avis des cadres du secteur public, des responsables administratifs, dont la plupart d'entre eux sont nommés par le pouvoir politique, des dénonciations anonymes et un système de personnes fichées. Les moyens d'opposition à cette injustice pour les employés licenciés du service public ont été bloqués.

Une commission appelée «Commission de l'état d'urgence» a été créée environ six mois après l'annonce de l'état d'urgence et a commencé ses activités treize mois après. Tous les membres de cette commission, composée de sept personnes, ont été nommés par le gouvernement, et le président a été autorisé à les démettre de leurs fonctions. Dans ces circonstances, il est impossible de s'attendre à ce que la commission prenne une décision juste. Ainsi, la commission a statué sur environ 70 406 demandes sur un total de 126 120 demandes déposées à ce jour. Pour 65 156 d'entre eux, ce qui fait 92,5 pour cent, cela a abouti à un rejet. Seuls 7,4 pour cent d'entre eux, ce qui fait un total de 5 250 employés du secteur public, ont été réintégrés dans leurs fonctions.

Ainsi, permettez-moi de souligner ces deux points: le nombre de travailleurs du secteur public interdits de se syndiquer est en augmentation et l'interdiction de grève continue. En Turquie, les obstacles juridiques pour les travailleurs du secteur public de s'affilier à un syndicat se sont accrus. Un employé sur neuf du secteur public est empêché par la loi d'être membre d'un syndicat. Ceci est également expliqué en détail dans le rapport de la commission d'experts. Malgré cela, le régime d'interdiction de la grève des travailleurs du secteur public en Turquie est toujours en vigueur; deuxièmement, la répression sur le KESK a augmenté. Pour ce qui est des droits et de la liberté syndicale, notons que toute manifestation collective et tous les communiqués de presse que nous souhaitons faire sont entravés pour des raisons sans fondement juridique.

Government member, Ukraine – It is widely recognized that Convention No. 87 is a vital instrument of the International Labour Organization, a fundamental building block for tripartism, collective bargaining and social dialogue without which freedom of association and equality at work would not be possible. Ukraine is a State party of the Convention since 1956 and fully acknowledges and highly values the important role played by this indispensable international document as an effective mechanism for ensuring the principles of allowing and enabling workers and employers to exercise freely their rights to organize. Despite its significance, the Convention unfortunately remains one of the least widely ratified of all the ILO's fundamental Conventions. The recurrent report of social dialogue, which was discussed during last year's International Labour Conference session, as well as the recurrent report of the Committee for Fundamental Principles and Rights at Work presented in 2017, both strongly emphasize the need to further promote the universalization and proper adherence to this essential treaty. Ukraine therefore recognizes the efforts being undertaken by our neighbour, Turkey, to comply with the Convention, in particular those related to the adoption of relevant national trade union legislation, and hopes for further fruitful cooperation between Turkey and the ILO in all necessary social and labour fields, including the strengthening of social dialogue on national and international levels.

Worker member, Belgium – Just the day before yesterday, we were shown a video recalling the importance of the Committee on the Application of Standards, and highlights this Committee and with it the whole International Labour Organization has seen throughout its 100 years of existence. Among these highlights was the much appreciated contribution of the ILO to the establishment and recognition of a truly independent self-governing trade union in Poland.

- Turkey has ratified the Convention in 1993. The text of this Convention is clear: “Workers and employers, without distinction whatsoever, shall have the right to

establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”

- “Workers’ and employers’ organisations shall have the right to elect their representatives in full freedom.”
- “The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.”
- “The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.”

Notwithstanding the clarity of these phrases, to our regret, in July 2018, Turkey adopted Presidential Decree No. 5. This Decree establishes the State Supervisory Council, which has the authority to investigate and audit trade unions, professional associations, foundations and associations at any given time. It even has discretion to remove or change the leadership of trade unions. This is one of the most blatant and clear violations of the Convention, one of the fundamental Conventions of the ILO, covering one of the fundamental principles and rights at work: namely the freedom of association and the protection of the right to organize. It is the role of our Committee to guarantee the right application of the standards of the ILO.

In this case, the conclusion is clear; Turkey needs to ensure that Turkish trade unions can be truly independent and self-governing. The ability by the Government to remove or change the leadership of trade unions not only restricts the functioning of truly independent, self-governing trade unions, but simply makes it impossible to function as a truly independent, self-governing trade union. To be clear; this goes beyond trade unions. The possibility to remove or change the leadership of employers’ organizations would amount to an even graver violation of the Convention.

To conclude this intervention, we refer to the extensive compilation of decisions of the Committee on Freedom of Association. Chapter 7 of the Compilation published last year, covers in depth the right of organizations to elect their representatives in full freedom. It goes without saying that removals constitute serious infringements of the free exercise of trade union rights and are not compatible with the principle of freedom of association, be it for private sector or public sector employees.

Membre gouvernementale, Maroc – Je voudrais tout d’abord remercier le gouvernement de la Turquie pour les informations qu’il a fournies et qui constituent des éléments de réponse aux différents commentaires et observations formulés à cet égard par la commission d’experts.

En effet, les commentaires de la commission d’experts portent sur un certain nombre de sujets en relation directe avec la mise en œuvre de la convention, notamment en ce qui concerne les droits des fonctionnaires de constituer ou de s’affilier à des organisations de leur choix, le contrôle du fonctionnement interne des syndicats, la dissolution des syndicats.

Le représentant de la Turquie a apporté des explications et des éclaircissements importants tout en signalant que la Turquie a vécu une situation particulière en étant confrontée à une menace pour sa sécurité nationale en 2016.

En se référant à ses explications et particulièrement au fait que les droits et les libertés fondamentaux sont protégés par la Constitution, les fonctionnaires turcs ont le droit de s’organiser, et que les restrictions sont limitées aux hauts fonctionnaires dans certains domaines tels que la sécurité et la justice, les organisations de travailleurs ont le droit d’organiser librement leurs activités dans la mesure où elles sont conformes à la législation

nationale. Tous les syndicats ont le droit de contester les décisions de dissolution en s'adressant à la commission d'enquête.

A cet effet, nous appuyons les efforts déployés par le gouvernement de la Turquie et nous l'invitons à redoubler d'efforts pour mettre en conformité la législation et la pratique nationales avec les dispositions et les principes de la convention n° 87.

Observer, Educational International (EI) – Under the heading of the Civil Liberties, a number of infringements were listed. As a trade union member, from the field of education, I have to express that dismissals, suspensions, deportations, transfer from the workplace without the will of the worker are the practices that the Turkish Trade Union members have been facing for a very long time and all these are stated in the Committee of Experts report.

The Government, when it is asked, usually defines itself by defining these trade union members acting contrary to the legislations. However in reality the practices of these trade union members are not investigated or punished since they are acting against the legislation. These acts of the Government are the result of the will to oppress the trade unions which are accepted as dissidents. Also, the prohibitions of the demonstrations, brass meetings, trade union members' gatherings and the arrests, dismissals and the court cases that the trade union members and the trade union officials are facing daily, as mentioned in the reports of the Committee of Experts, make it impossible for the Turkish trade unionists to carry on an independent trade union activity. As an example, the General Secretary of Egitim Sen was arrested on 4 May, last month, because of attending a press meeting. Because of this arrest, he was not allowed to travel abroad because of a travel ban and passport ban put by the local administrators. He was supposed to be here in the ILO Conference, but he could not. Now, is it possible to talk about freedom of association and right to organizing in this kind of a situation? Discrimination among the trade unions because of being politically close to the Government or not is another crucial problem. Using the power and the tools of the State as an advantage for pro-government trade unions is another unacceptable act. How can a trade union member enjoy the right of freedom of association and enjoy the right to organize under these conditions. These rights can only be fulfilled when all these rights are protected either by the domestic or the international laws and Conventions.

Trade union rights and freedoms are under, or must be under, the protection of international Conventions, including ILO Conventions and domestic laws. Article 90 of the Turkish Constitution considers duly rectified international Conventions superior to domestic legislation. However, it is clear that the Government does not obey these obligations in this regard. As a result in this case, it is clear from the reports and interventions that the Convention is heavily violated and ignored.

Miembro gubernamental, Cuba – Mi delegación desea reafirmar la importancia de continuar promoviendo el tripartismo y el diálogo social en cada país para resolver las diferencias que se suscitan en el mundo del trabajo y favorecer una mayor protección de los derechos de los trabajadores, lo cual debe ser un objetivo permanente para todos. Por ello, reconocemos los pasos dados por el Gobierno de Turquía al tiempo que alentamos a que continúe los esfuerzos realizados con este fin.

Hacemos énfasis también en la necesidad de continuar fomentando en el marco de la OIT las medidas y programas que fomenten la asistencia técnica a los países y den espacio a los gobiernos para que emprendan acciones dirigidas a resolver los desafíos que enfrentan en el mundo del trabajo, en un ambiente de cooperación e intercambio.

Observer, International Transport Workers' Federation (ITF) – When we consider individual cases of civil rights violations against trade unionists in Turkey, it is always important to look at the wider context because what we usually find is a catalogue of

violations of the Convention in the lead up to a Government-led crack down on legitimate trade union activities.

Allow me to share one example involving the ITF-affiliated TÜMTIS union. When the workers of a large cargo company in the Province of Gaziantep joined TÜMTIS in late 2017, the employer tried to coerce the workers to resign from the union. After the workers refused, the company dismissed nine workers and violently removed them from the premises. The incapacity reports issued to the workers by their health services demonstrate the level of violence metered out on the workers.

When Kenan Ozturk, the TÜMTIS President, and four other union officials visited the unfairly dismissed workers and held a press conference, little did they know that the Public Prosecutor was already drafting an indictment against them. Mr Ostruck and his fellow officials were charged with breaching the now infamous Law 2911 on Assemblies and Demonstrations. The Prosecutor is asking for jail terms between 18 months and three years, all because these officials have the audacity to hold a press conference and speak to their members.

The second hearing in this case will take place in four weeks' time, on 9 July. This case against TÜMTIS and its leaders is not an isolated case. This Committee is familiar with the cases referred to in the Committee on Freedom of Association Case No. 3098. Indeed, TÜMTIS leader, Nurettin Kilicdogan, languishes in prison as I make this statement. Such levels of judicial harassment creates an atmosphere of intimidation and fear, prejudicial to the development of trade union activities.

I would also like to report to this Committee that another strike has been postponed under section 631 of Act No. 6356 since the Committee of Experts issued their observations. A strike in Izmir, called by the ITF-affiliated Railway Union, was officially suspended by Presidential Decree on 8 January 2019. The Decree signed by President Erdoğan himself confirms that the strike was postponed because it was, I quote, “disruptive to urban public transport services”. This was the first time article 631 has been invoked in the inland transport sector.

To quote the President of the Izmir Bar Association, “this decision is a blow to labour rights, democracy and the right to strike. It is devoid of any legal basis and is contrary to the constitution, national laws and international conventions” unquote. For transport workers and their unions in Turkey, the situation is getting desperate. It is our sincere hope that sooner rather than later workers and unions in the transport sector – and indeed all workers and unions – can exercise their full trade union rights in freedom.

Government member, Azerbaijan – We believe this important Committee should serve as the forum for constructive discussions aimed at improving compliance with international labour standards. We appreciate the information provided by the Government of Turkey and welcome its willingness and commitment to constructively engage and cooperate with the ILO. In particular, we welcome the readiness of the Government of Turkey to provide additional information to the Committee of Experts which would allow it to better evaluate the situation in Turkey.

We encourage the Government of Turkey to continue pursuing its efforts to amend the relevant laws in consultation with the relevant stakeholders, especially the social partners, and to continue providing information of further progress made in this regard. We call on the ILO and its member States to support the Government of Turkey and to provide any technical assistance that it might seek in this regard.

Interpretation from German: **Worker member, Germany** – In 1970, the International Labour Conference adopted by a broad majority the resolution concerning trade union rights

and their relation to civil liberties. The resolution points out that “rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties, which have been enunciated in particular in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.”

Civil liberties form the grounds on which all rights guaranteed by the Convention are to be exercised. We consider freedom of association to be one of the cornerstones of the ILO. I am no engineer but even I know a cornerstone must be built on solid ground. However, when we look at the situation in Turkey we note with great concern that this ground is very brittle. In its 2019 report on Turkey, the European Commission noted that there “has been serious backsliding in the areas of freedom of expression, assembly, and association and in procedural and property rights.” “Trade union rights continue to be under severe pressure.”

In November 2018, for instance, the Turkish trade union leader Abdullah Karacan was shot while meeting workers at a tyre factory. Two other union representatives were wounded in this incident. Arzu Çerkezoğlu, president of the Turkish care-worker union and of the Turkish trade union confederation DISK, currently face trial for three years’ imprisonment, just for having taken part in a public panel debate entitled “Quo vadis Turkey”. On similarly unsubstantiated grounds the exercise of freedom of speech is oppressed on a constant basis by banning press statements or demonstrations by unions. The right to freedom of assembly is also extremely limited, with rallies and demonstrations regularly banned and protestors subject to disproportionate police responses and detainment.

The state of emergency has been used as *carte blanche* for the infringement of civil liberties and hence the grounds of trade union rights. But even after July 2018, many of the emergency laws are still in place and with them the climate of intimidation for trade unionists.

We therefore call on the Turkish Government to repeal legislation and decrees implemented under the state of emergency and to take immediate steps to bring into line both its law and practice with its obligations under Convention No. 87 and under the international human rights law.

Interprétation de l’arabe: Membre gouvernemental, Algérie – L’Algérie remercie le gouvernement turc pour son rapport substantiel sur la situation du droit syndical et le droit de grève et soutient l’ensemble de ses commentaires.

Nous saluons également les efforts entrepris par le gouvernement turc, en particulier sa disposition à coopérer avec le BIT. L’Algérie salue l’ouverture syndicale aux travailleurs temporaires employés par des agences d’emploi privées. Nous saluons les progrès réalisés dans l’instauration des voies de recours judiciaires contre les violations des libertés syndicales et restons déterminés à soutenir la Turquie dans ses efforts visant à renforcer l’Etat de droit, protéger et promouvoir plus efficacement les droits et les libertés, renforcer l’indépendance du pouvoir judiciaire et faciliter l’accès à la justice.

L’Algérie partage de nombreuses priorités avec la République turque en matière de liberté syndicale, et l’Algérie réitère son plein soutien dans les limitations apportées au droit de grève afin de préserver la paix du travail dans les services essentiels, s’ils sont définis comme des 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, ou s’ils sont justifiés par le risque d’atteinte à l’ordre public. C’est ainsi le cas par exemple des magistrats et des personnels des services pénitentiaires.

Interpretation from Turkish: Observer, Public Services International (PSI) – I shall limit myself to three points. Firstly, tens of thousands of workers in the public sector have

been arbitrarily dismissed under decrees which were brought in during the state of emergency; 796 members of the Trade Union of Employees in Public Health and Social Services (SES) were dismissed from public administration and only 17 of them were reinstated. The Inquiry Commission on the State of Emergency Measures was established by the Government. All the officials dismissed have to address this Committee before they can turn to the courts. So far, 117 application cases of SES members were examined by the Commission; while 42 of these applications were accepted and achieved a positive ruling, 58 others were rejected.

Secondly, a new measure has been introduced to the recruitment procedure of public officers. It is called security vetting. Those who do not pass the vetting are not recruited for public institutions. The scope of the vetting is such that it is impossible to know who will be ruled out under and by which criteria. The application of this procedure is illegal and arbitrary; that is, the right of citizens to employment is violated through unfair vetting. People are considered inappropriate for public posts depending upon their ethnic religious origin, their political opinions or their choice of trade union.

Thirdly, in addition to the security vetting, interviews are common currency for recruitment in the public sector. These interviews are not intended to determine objectively compatibility of professional skills with the requirements of the post. The interview has now become a mechanism which makes it possible to ascertain the loyalty of each for those who might be recruited as to whether they are appropriate; no trace of these interviews is left. It is completely arbitrary, thus those who gain a given mark during the exam have sometimes considered to have failed on the basis of the interview. It is very difficult thus for those employed in this sphere and these things are used as a medium for subordination in the absence of job security. No worker in the public sector can exercise a freedom of expression, his right to take part in political life, his right to join a trade union, etc. This effects negatively the quality of our public services. Our struggle under these conditions as SES Union is conducted in various ways. The public authorities hinder custom trade union works such as the distributing of pamphlets, opening of information stands or other matters relating to our work and holding organizations and posting of posters and things like this are subject to particular checks and the employers decide what can appear. All of these things show that the right to organizing freedom of association are violated in favour of and by the authorities. In spite of these difficult and ethnic challenges in our sector we continue to fight with determination for labour and trade union rights.

Government member, Kazakhstan – We welcome Turkish engagement with the ILO. We wish to stress that eight years ago the Committee discussed the situation in Turkey with regard to the Convention. Immediately after their discussion, Turkey enacted in 2012 a new trade union legislation in conformity with the constitutional changes and the ILO Conventions and demanded public servants trade unions law to recognize collective bargaining rights to civil servants.

We believe that Turkey will work with ILO and social partners in the same spirit of constructive cooperation, regarding the ILO and the international labour standards with the highest esteem and comply with reporting obligations and the ratified ILO Conventions.

Worker member, United Kingdom – In 2018, the British Public Sector Union (UNISON) sent a delegation to speak to their Turkish colleagues. They reported a grim picture of a country where workers' rights and the rule of law have been severely diminished despite the official end of the state of emergency. The UNISON report distributed among their 1.3 million members highlights systematic abuses, including the arrest of trade union leaders, the banning of peaceful demonstrations and the prohibition of strike action on spurious national security and public health grounds. One strike at a glass manufacturing company was denied because a shortage of glass might lead to a shortage of medicines if they happen to need glass containers. This thin and tortuous logic was used to turn a

manufacturing strike into one with de facto essential services status in clear contravention of ILO definitions, as well as of article 51 of the Turkish Constitution. As you have heard, this concern for health and safety was not evident at the construction of Istanbul's third airport, where official figures state that in excess of 50 workers have so far died on-site. When the workers took strike action to demand that their terrible working conditions were remedied, 600 were arrested. We are unaware of any prosecution of those responsible for the deaths of more than 50 workers.

In 2018, 132 Turkish workers were dismissed from a cosmetics factory. After demonstrating tenaciously for 300 days, some were reinstated but only on condition that they forwent their union membership. Such behaviour must be dealt with by the State if it is to meet its international obligations, but no action has been reported. Our colleagues also raised concerns about the treatment of their fellow public sector workers. In particular it is depressing to see the same request in the Committee of Experts' report that the Government of Turkey should review section 15 of Act No. 4688. The wording of the Convention could not be clearer, that workers should be allowed to establish and join organizations of their own choosing. Their status as senior civil servants or prison officers should have no bearing on their right to be independent trade unionists, as my colleagues from the British First Division Association of the highest rank of civil servants or the British Prison Officers' Association would attest.

Government member, Pakistan – My delegation would like to thank the Turkish Government for the detailed response they have provided. We also welcome the Turkish Government's willingness to engage in dialogue and provide more information. We take note of Turkey's efforts to work closely with the ILO in several fields, including the strengthening of social dialogue, at the national and international level. We encourage them to continue to undertake further steps in this regard. Observations of the Committee of Experts about Turkey contain many points where the Committee of Experts need further information and clarification in the form of relevant legislations and court rulings to better evaluate the situation. Turkey has taken a number of steps since its last evaluation in 2011, when the Committee discussed this case. It has also demonstrated commitment and willingness to engage with the Committee to make improvements on the ground. For these reasons, we join the request that the Committee takes into account all the efforts made by Turkey, and allow more time to the Committee of Experts to adequately examine the information provided by Turkey.

Worker member, Netherlands – It is with utmost concern that the Dutch Trade Union FNV observes a continuous violation of the Convention that has been ratified by Turkey in 1993. Although the state of emergency was lifted on 19 July 2018, there are still practices that imply a continuation, such as for instance martial law in some provinces, which in many cases affects trade union activities.

In the Netherlands we have a large amount of members who have intensive contact and cooperation with their colleagues of the trade unions in Turkey. They have observed a dramatic increase in the anti-union policies since the coup attempt, resulting in repressive policies with far-reaching effect for the careers and for the personal life of these workers.

Amnesty International was outlining the arrests of workers protesting the conditions of a new airport construction site near Istanbul in 2018, saying: "By detaining and prosecuting these workers who were simply calling for dignified and safe working conditions, the Turkish authorities are sending out a message that anyone who attempts to stand up for their rights will be punished." As a result, anti-union practices clearly exist, of which even multinational companies are not exempt, as in the case of the female workers earlier mentioned by my colleague at a Turkish subsidiary of a cosmetics company, where 132 female workers had been unfairly dismissed for belonging to a trade union.

Also it is unprecedented that so many public officers were suspended and dismissed from their offices in Turkey since the military coup attempt on 15 July 2016. According to the UN High Commissioner for Human Rights there are approximately 150,000 dismissed and around 40,000 suspended public officers in Turkey. There is a criminalization and a defamation policy towards public officers in general and specifically against members of the independent trade union KESK.

As a clear example of anti-union policies and stigmatization of trade union members and activists we mention the case of the 25 KESK women members who were charged with membership of an armed terrorist organization, and secondly the 72 KESK members (women and men) including the former KESK President, Mr Lami Özgen, the current Co-President, Mr Mehmet Bozgeyik, and several other executive committee members, all charged with membership of an armed terrorist organization.

So we strongly condemn the current practice resulting from the use of the former state of emergency as an excuse for trade union members' dismissals for the usage of their trade union rights and freedoms.

Worker member, Ukraine – I want to draw the Committee's attention to the attack against construction workers at the construction site at the new Istanbul airport who have been struggling for fundamental labour and human rights, including the right to form a trade union and for collective action according to the Convention.

At the end of 2018, from 26,000 workers at the site of the new Istanbul airport close to 22,000 were subcontract workers employed by 281 companies. The main contractor was Airport Construction Ordinary Partnership Joint Stock Company, IGA. In addition, according to Building and Wood Workers International (BWI), these subcontracted workers were facing very dire circumstances ranging from low wages, delayed payment of wages, unsafe working conditions, poor and substandard accommodation facilities, harassment and a series of human rights violations.

At the height of the crisis, serious confrontation took place resulting in the arrest of 24 workers. Turkish unions including Yol-İş have been actively campaigning for the rights of subcontracted workers and in the construction sector, including the right to join trade unions and negotiate collective bargaining agreements.

We hope the complaints and concerns that workers have rights, we will its resolution, and a substantive long-term permanent solution must be put in place to ensure that fundamental labour and human rights, including freedom of association for subcontract workers in the Istanbul new airport and throughout Turkey, are guaranteed.

Government representative – We have listened carefully to the distinguished spokespersons of the Employers' and the Workers' groups, as well as the other speakers who participated in the discussion. We attach great importance to the work of this Committee and regard it as a platform for constructive tripartite dialogue. However, we sometimes observe with regret that it is also used for political purposes to try to score points rather than to engage in meaningful dialogue. Within the time available to me, I will try to address some issues that have been raised by the previous speakers. I will not respond to the allegations on the issues that fall outside the scope of the Convention.

First of all, I would like to comment on the claims made by KESK, saying that KESK is being targeted for dismissals and also being discriminated against. We have got the figures that show the contrary. As a matter of fact, the distribution of the number of trade union members who were dismissed by the Decree with the force of the Law during the state of emergency by the most representative public servants' confederations is as follows: MEMUR-SEN: 10,600; TOURKİYE KAMU-SEN: 4,454; KESK: 4,269.

Although KESK always alleges that their Confederation is being targeted or discriminated against, more MEMUR-SEN members were dismissed in fact. Even KESK itself informs us in a communication submitted for the report on the Convention that out of 588 decisions given by the Inquiry Commission in KESK members' cases, 199 of them were accepted for reinstatement. It shows a rate of acceptance for KESK members, which is one in three, high above the average rate of less than one in ten decisions.

On the allegation of unlawful arrest and harassment during the construction of the Istanbul Airport: In the Istanbul Airport construction, approximately 30,000 workers were working. I would like to inform you that around 2,000 workers held a demonstration on 14 September 2018 without fulfilling any necessary procedures under the Law on Meetings and Demonstrations. While the law enforcement forces were trying to put the situation under control, negotiations were held between the local governor and the managers and the workers involved, with no success. In spite of all efforts, the crimes of unlawful demonstration and action, violation of the right to work and the damage to property were continued. In the meantime, it was determined that people who were workers or workers' representatives also came to the workers' accommodation camp area to take action. Law enforcement forces intervened because of the disturbance to public order as a result of social unrest and in order to prevent its further spreading and any harm that might cause to the public and to prevent further damages to public property; 360 out of 420 people held were released without any charge by decision of the Public Prosecutor after an identity check, and 62 suspects were detained. While 25 suspects were released under the condition of judicial control, the remaining 37 suspects were charged with crimes for violation of the provision of the Law on Meetings and Demonstrations and the Penal Code.

Six of these suspects were later released by the competent court. It was determined that eight suspects were not employed by the construction company and were in the area to incite unrest. Therefore, the allegations do not reflect the reality.

Another comment about the unionization. A distinguished Worker representative says that conditions make it impossible for trade unions to operate in Turkey. But the figures and the practice tell another story. When we look at the rate of unionization in 2013, just after the new Act on the trade union and collective labour agreement came into force, the rate of unionization in the private sector was 9.21 per cent. But in January 2019, it increased to 13.86 per cent. A similar situation exists among the public servants in the public sector too. As of July 2018, the rate of unionization is 67.65 per cent while it was 47.9 per cent in 2002 after Act No. 4688 came into force. These figures alone indicate the positive developments taking place in Turkey.

A climate of union liberties and plurality of choice can also be seen from the fact that currently five trade union confederations compete in the private sector while competition for membership in the public sector is among nine public servants trade union confederations making it in total 14 confederations.

On the allegations of excessive use of force by the security forces, in previous years we also commented on this and now we are going to say similar things. The Government has taken all necessary measures to prevent the occurrence of such incidents. These incidents largely occur for two reasons. One is related to the infiltration of the illegal terror organization into marches and the demonstrations organized by trade unions. The second reason is the unnecessary insistence of some trade unions to organize such meetings in areas and squares of the cities which are not allocated for such purposes. Security forces intervened in 2 per cent of the 40,016 actions and activities that took place in 2016; 0.8 per cent out of 38,976 activities in 2017; and 0.7 per cent out of 36,925 activities in 2018. As of 7 May 2019, the intervention rate is around 0.8 per cent.

Intervention of the security forces occurs only in situations where violence and attacks against the security forces and citizens are observed and ordinary flow of life is affected unbearably. Intervention rates show that peaceful legal activities and demonstrations are taking place without any obstacles in Turkey.

In relation to the work of the Inquiry Commission, I would like to add that as an effective remedy, the Commission delivers individualized and reasoned decisions in respect of 1,200 applications in a week, as a result of speedy and extensive examination. With this rate, it can reasonably be expected to finish its job in less than one year's time.

Worker members – We listened carefully to all interventions and I want to say that we appreciated especially the intervention on behalf of the European Union. It was clear and helpful. It is important to reiterate that many of these violations of the Convention that received the attention and observation of this Committee and of the Committee of Experts have persisted prior to 2008 and the declaration of the state of emergency. We recall that already, back in 2008, the ILO sent a high-level mission to Turkey and in 2010 a high-level bipartite mission visited the country. The visits were to provide support to the Government to comply with its obligations under the Convention. Therefore, the Government cannot justify now its failure to comply with the Convention on a state of emergency. In any case, the supervisory bodies have been consistent that the state of emergency does not empower the Government to derogate from its obligations under the Convention. The Government is expected to act in a reasonable manner when taking measures of national security and emergency.

It is in circumstances of national security and emergency when the power of the State to interfere is at its utmost that the safeguards and guarantees provided by the Convention become more relevant in order to prevent an irreversible damage to innocent individuals and workers' organizations. Therefore, any attempt to undermine, restrict or impede these rights, without the necessary guarantees and safeguards must receive the full and serious examination of the supervisory system of the ILO.

As a result of the state of emergency, about 110,000 public servants have been expelled; about 5,600 academics have been expelled; about 22,500 workers in private education institutions have had their work permits cancelled; 19 trade unions dissolved and about 24,000 workers are undergoing various forms of disciplinary action associated with worker protests and so on.

We are concerned that out of the 42,000 decisions delivered by the Commission, only 3,000 have been accepted and 39,000 have been rejected. We are deeply concerned that independent trade union organizations have been targeted to weaken and delude their effects in the protection and advancement of the social and economic interests of their members. This is clearly a disguise process to control or weaken independent and free trade unions in Turkey.

We call on the Government to stop this despicable action. We reiterate that any law or measure that gives the authorities direct or indirect powers of control over the internal functioning of unions, preventing workers' and employers' organizations from realizing their organizational objectives in full freedom and independence is incompatible with the Convention.

The Government must at the very least consult the social partners to adopt a plan of action for the review of all existing legislation not in compliance with the Convention. The Government must equally consult social partners to ensure that there is an acceptable and fair judicial process to review actions taken against unions and their members and that any such process is independent and enjoys the confidence of social partners. And so we call on

the Government to accept an ILO mission in order to assess progress before the next International Labour Conference.

And finally, I would also like to respond to some of the comments made by the Employers with respect to the right to strike. We would like to reiterate that our firm position has not changed: Convention No. 87 protects the right to strike. The ILO supervisory system, including the Committee of Experts, has relied upon well-established methods of interpretation to have arrived at this conclusion. It forms part of the right to freedom of association, which is a fundamental right that allows workers to ensure that they have voices, too often ignored by governments and employers, that are heard. Not only is the right to strike governed by Convention No. 87, it is also a customary international law norm as expressed by the Office of the High Commissioner for Human Rights.

With regard to the Employer's comments with respect to the right to strike of civil servants, I would like to highlight that restrictions in this regard may only be permissible for public servants exercising authority in the name of the State and in essential services in the strict sense of the term.

The Committee on Freedom of Association has defined its own mandates in a clear and transparent manner. It consists of the examination of the compliance of national legislation and practice with the principles of freedom of association and collective bargaining as laid down in the relevant Conventions.

Employer members – I would like to begin by thanking the Government for its submissions to the Committee and note particularly the comments that were constructive recognizing that the Committee is a platform for ongoing and constructive dialogue, a statement with which we agree.

We do not have agreement in respect of the Workers' statements regarding the appropriateness of the Committee of Experts' observations on the right to strike and clearly there are extensive observations in this regard; as we do not have agreement that that is appropriate to guide Government action on, those are elements that cannot be included in the conclusions of this case. Clearly we have a slightly different view of this case than the Workers on some of the other aspects of this case and, as a result, we are not in a position to make a joint request for an ILO mission at this time, we do not think that that is the appropriate reaction. Rather we think it is fairly clear what falls within the appropriate follow-up action and direction that should be included in the conclusions.

We think in respect of ensuring that the Government recognizes that respect for civil liberties of workers and employers is the very basis for the exercise of freedom of association under the commitments in Convention No. 87, and therefore encourage the Government to give its governmental administration instructions that are necessary to ensure that violations of civil liberties will not occur in the future and to provide information to the Committee of Experts of any outcomes of either administrative or judicial remedial channels invoked by union members in respect of the issue of civil liberty violations.

We also think that it is appropriate, in considering this case, that the Government be called on to make the necessary changes to the law, in particular, in section 15 of Act No. 5688, to ensure that all public servants have the right to organize. And, as has been discussed, only the armed forces and police may be exempted, according to the Convention, from these obligations and these entitlements.

We would also note that, as was discussed in some of the submissions, it is important for the Government to take action that its government agencies take measures to ensure regular and efficient – that they do not interfere with the organizations and autonomy of trade unions under the perspective of ensuring regular and efficient functioning, that is

outside the proper functioning other than requesting trade union organizations to submit financial statements, or reports. And, in this regard, we request the Government to provide the Committee of Experts with a copy of Decree No. 5, as well as its information on its application in practice, so that the Committee of Experts can conduct a proper examination in respect of this Decree. And, in particular, on this question of both the right of trade unions and employers' organizations to organize their activities without interference from public authorities.

We also, on the issue of the dissolution of trade unions in the allegations in that regard, we call upon the Government to provide detailed information on the grounds and related circumstances for dissolution in all cases, as well as information on the re-establishment of trade unions as a result of decisions made by the Inquiry Commission or by the administrative courts.

So, in closing, we find the information that was submitted by the Government to be helpful today. We would though encourage the Government to submit its 2019 report with this detailed information as it has advised it would do and provide copies of the documents requested by the Committee of Experts together with the 2019 report, so that these issues in particular can be further analysed.

We certainly call on the Government to do this in a constructive way and to continue this constructive dialogue.

Conclusions of the Committee

The Committee took note of the information provided by the Government representative and the discussion that followed.

The Committee recalled that the respect for civil liberties was an essential prerequisite for freedom of association. The Committee noted with concern the allegations of restrictions placed on workers' organizations to form, join and function.

Taking into account the discussion, the Committee calls on the Government to:

- **take all appropriate measure to guarantee that irrespective of trade union affiliation, the right to freedom of association can be exercised in normal conditions with respect for civil liberties and in a climate free of violence, pressure and threats;**
- **ensure that normal, judicial procedure and due process are guaranteed to workers' and employers' organizations and their members;**
- **review Act No. 4688, in consultation with the most representative workers' and employers' organizations, in order to allow that all workers without any distinction, including public sector workers, freedom of association in accordance with the Convention in law and practice;**
- **revise Presidential Decree No. 5 to exclude workers' and employers' organizations from the scope; and**
- **ensure that the dissolution of trade unions follows a judicial decision and that the rights of defence in due process are fully guaranteed through an independent judiciary.**

The Committee requests that the Government report on progress made on the above-mentioned recommendations to the Committee of Experts for its meeting in November 2019.

Government representative – We thank those countries and the social partners who approached the case constructively during the discussions and acknowledged the positive developments and progress made in Turkey relating to the subject matter. We will continue to work with our social partners at national and international level to respond to their concerns and we will inform the Committee of Experts on the issues raised in their reports in our next report.