



Governing Body

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Report of the Director-General

Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81)

▶ Table of contents

	Page
I. Introduction	3
II. Examination of the representation	4
A. The complainant's allegations.....	4
B. The Government's response.....	5
III. The Committee's conclusions.....	5
IV. The Committee's recommendations.....	7

▶ I. Introduction

1. By a communication dated 3 February 2021, the General Confederation of Labour (CGT) of social affairs of Franche-Comté, the CGT Interdepartmental Labour, Employment and Vocational Training Union (CGT-TEFP) of the departmental units for Côte-d'Or (21), Nièvre (58) and Saône-et-Loire (71) of the Bourgogne-Franche-Comté Regional Directorate for Enterprises, Competition, Consumer Matters, Labour and Employment (DIRECCTE), and the CGT-TEFP made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81), ratified by the country on 16 December 1950. The Convention remains in force in France.
2. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of France and brought it before the Governing Body.
4. At its 342nd Session (June 2021) the Governing Body found the representation to be receivable and set up a committee to examine it. The Committee is composed of Mr Janson (Government member, Sweden), Ms Hornung-Draus (Employer member, Germany) and Mr Norddahl (Worker member, Iceland).
5. The Government of France submitted its observations regarding the representation in a communication received by the Office on 19 July 2021.
6. The Committee met virtually on 15 June 2022 and 17 August 2022 to examine the representation and adopt its report.

► II. Examination of the representation

A. The complainant's allegations

7. In their representation, the complainant organizations allege that the French authorities failed to comply with Articles 6 and 18 of Convention No. 81 in the context of events following a 2019 inspection visit to an enterprise in the construction sector.
8. In particular, the complainant organizations allege that:
 - (i) On 2 April 2019, following an inspection visit to an enterprise in the construction sector, an inspection officer had noted that employees of the enterprise did not have access to sanitary facilities on the building site. Taking into account the employer's commitment to rectify the situation, the inspection officer had sent a letter with his findings dated 4 April 2019 asking the enterprise for proof that the situation had been rectified.
 - (ii) On 8 April 2019, the Secretary-General of the employers' organization to which the employer belongs, had asked the directorate of employment services of the departmental unit of Jura for an informal opinion on the employer's draft response to the letter containing the inspection official's findings. The Deputy Director of the departmental unit of Jura had allegedly recommended the Secretary General of the employer's organization in question to respond, "exactly like that", but included in his reply that he thought that "the inspectorate had plenty of time on its hands".¹
9. Following this statement by the Deputy Director of the departmental unit of Jura, various trade union organizations referred the matter to the departmental, regional and national authorities on different occasions between 12 June 2019 and 1 October 2020, requesting that the authorities intervene with the employers' organization to which the employer concerned belonged in order to reaffirm the legitimacy of the labour inspectorate. According to the organizations, the remarks of the Deputy Director of the departmental unit of Jura had called this legitimacy into question. The trade unions consider that these remarks could lead one to believe that the labour inspectorate was not supported by its hierarchy and suggested its action with the enterprise was futile.
10. According to the complainant organizations, the authorities they addressed did not support their requests for intervention.
11. On 11 October 2019, the labour inspector at issue referred the matter to the National Labour Inspection Council (CNIT), which issued its decision on 1 July 2020. In its decision, the CNIT considered that the comment of the Deputy Director in question casted aspersions on the labour inspectorate, that the local and regional authorities of the labour inspectorate should have expressed their strong disapproval of the matter, and that the Regional Director of the labour inspectorate had failed to respect his deontological obligations under the Labour Code.
12. In their representation, the complainant organizations state that, in order to comply with Articles 6 and 18 of Convention No. 81, the Government needs to intervene with the enterprises or their representatives to legitimize the action of the labour inspectorate, because it has been called into question.

¹ English translation of the original French: "*dans ce sens en effet*" and "*l'Inspection a bien du temps à perdre*".

B. The Government's response

13. In its response, the Government maintains that it did not fail to fulfil its obligations under Convention No. 81 because there was no improper external influence that would jeopardize the independence of the action of the labour inspectorate in the context of the events in question. The Government also states that the central inspection authority had explicitly supported the action of the labour inspectorate in a manner commensurate with the seriousness of the case, in which the labour inspector had not been prevented from carrying out his tasks.
14. According to the Government, the remarks of the Deputy Director concerned constitute by their nature a breach of the obligation of discretion provided for in article R.8124-19 of the Labour Code, which is an ethical obligation requiring public officials to show restraint and moderation when publicly expressing their opinions, in order to preserve users' regard for public services. The Government also considers that these remarks had the effect of tarnishing the image of the labour inspectorate.
15. Nevertheless, the Government maintains that, while the remarks of the Deputy Director in question constitute a breach of the duty of discretion, they do not amount to improper external influence within the meaning of Article 6 of Convention No. 81. In this regard, the Government considers that the isolated comments of the Deputy Director of the departmental unit of Jura cannot be described as pressure on the labour inspector and were not intended to influence the enterprise's response to the labour inspector or the inspector's requests. Furthermore, the Government underscores that these remarks had no impact on the action of the labour inspector concerned, who was able to follow up as he wished on his inspection of 2 April 2019.
16. The Government also indicates that the Director-General of Labour, as the central authority for the labour inspection system, previously sent a letter on 3 January 2020 to the Deputy Director concerned reminding him of his obligations regarding the duty of discretion. With regard to the requests for intervention with the relevant employers' organization, the Government indicates that giving too much publicity or significance to the ethical failure in question could have tarnished the image of the labour inspectorate, rather than benefited it.
17. Finally, the Government notes that the position of the central labour inspection authority is not contrary to the decision of the CNIT on this matter, in particular insofar as it recognizes the failure of the Deputy Director concerned to comply with his deontological obligations. The Government also recalls that the CNIT decision did not specifically envisage any action with the employers' organization.

▶ III. The Committee's conclusions

18. The Committee's conclusions are based on its examination of the allegations made by the complainant organizations and the reply sent by the Government.
19. The Committee recalls Article 6 of Convention No. 81, which provides that:

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

20. The Committee also recalls the text of Article 18 of Convention No. 81, which provides that:
- Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.
21. The complainant organizations allege that the legitimacy of the labour inspectorate was called into question in the context of the following events:
- (i) Following the inspection of an enterprise in the construction sector, an inspection official sent a letter containing his findings to the employer requesting proof that the situation had been rectified.
 - (ii) The employers' organization of the employer in question had then requested an informal opinion from the directorate of employment services of the departmental unit of Jura regarding the employers' response to the letter containing the inspection official's findings.
 - (iii) In his informal opinion the Deputy Director of the departmental unit of Jura, allegedly indicated to the employers' organization to respond, "exactly like that", but he thought that "the inspectorate had plenty of time on its hands".
22. According to the complainant organizations, in order to comply with Articles 6 and 18 of Convention No. 81, the Government needs to intervene with the enterprises or their representatives to legitimize the action of the labour inspectorate because it has been called into question.
23. In response, the Government maintains that there has been no violation of Convention No. 81, for the following reasons:
- (i) the remarks made by the Deputy Director in question constitute by their nature a breach of the duty of discretion, which is an ethical obligation, but they do not amount to improper external influence within the meaning of Article 6 of Convention No. 81;
 - (ii) the isolated comments of the Deputy Director concerned were not intended to influence the enterprise's response to the labour inspector or the inspector's requests, and had no impact on the action of the labour inspector concerned, who was able to follow up on his inspection as he wished; and
 - (iii) the Director-General of Labour, as the central authority of the labour inspection system, has already sent a letter to the Deputy Director concerned reminding him of his obligations regarding the duty of discretion.
24. According to the Government, giving too much publicity or significance to the ethical failure in question could have tarnished the image of the labour inspectorate, rather than benefited it, and the central authority of the labour inspectorate offered its clear support for the action of the labour inspectorate in a manner commensurate with the seriousness of the case.
25. With regard to Article 6 of Convention No. 81, the Committee notes that the matter was already examined by authorities at the national level, including the CNIT. The Committee also notes the Government's indications and finds that there was no improper external influence and that the labour inspector in question was able to follow up as he wished on the investigation he had undertaken. **While recalling the importance of the principle of independence contained in Article 6, the Committee thus considers that, in the present case, there was no violation of Article 6 of Convention No. 81.** Regarding the argument that giving too much publicity or

significance to the ethical failure at issue could have tarnished the image of the labour inspectorate, the Committee takes the view that this has no bearing on its conclusions.

26. With regard to Article 18 of Convention No. 81, the Committee notes that the complainant organizations have not made any specific allegations regarding the manner in which Article 18 might have been violated. ***In the absence of specific allegations in this regard, the Committee considers that there was no violation of Article 18 of Convention No. 81 in the context of the events in question.***

▶ IV. The Committee's recommendations

27. **In the light of the conclusions contained in paragraphs 25 and 26 above on the issues raised in the representation, the Committee recommends that the Governing Body:**
- (a) **approve the report;**
 - (b) **publish the report and declare closed the procedure resulting from the representation.**

Geneva, 17 August 2022

(signed) Thomas Janson
Government member

Renate Hornung-Draus
Employer member

Magnus Norddahl
Worker member