▶ GB.341/INS/13/5

Governing Body

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Report of the Director-General

Fourth supplementary report: Reports of the two Committees set up to examine the representation alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Termination of Employment Convention, 1982 (No. 158)

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▶ Introduction

1. By communications dated 4 July and 27 November 2017, the Action Workers' Union Confederation (Aksiyon-Is) submitted a representation to the International Labour Office pursuant to article 24 of the ILO Constitution, alleging non-observance by the Government of Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Termination of Employment Convention, 1982 (No. 158).

2. The Governing Body declared the representation receivable at its 333rd Session (June 2018) and decided that it should be examined in conformity with the decision to be made at its 334th Session (October–November 2018) regarding the operation of the article 24 procedure in the context of its consideration of the agenda item "Standards Initiative: Implementing the work plan for strengthening the supervisory system". [1]

3. At its 335th Session (March 2019), the Governing Body decided to refer the elements of the representation regarding non-observance of Convention No. 87 to the Committee on Freedom of Association to examine in accordance with the Standing Orders under article 24 of the Constitution. Moreover, the Governing Body decided to establish a distinct ad hoc tripartite committee to examine the elements of the representation alleging non-observance of Convention No. 158. [2]

4. Turkey ratified Convention No. 87 on 12 July 1993 and Convention No. 158 on 4 January 1995.

5. The following provisions of the ILO Constitution relate to the representation procedure:

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.

6. By communications dated 30 May and 3 June 2019, and in accordance with article 4(1)(c) of the Standing Orders concerning the procedure for the examination of representations, the Office invited the Government to supply any observations it might wish to make with regard to the elements of the representation that refer to the non-observance by Turkey of Convention No. 158 and those of Convention No. 87, respectively.

[1] GB.333/INS/8/4 and GB.333/PV, para. 118.

[2] See GB.335/INS/PV, para. 588.

7. The Government of Turkey submitted its observations with regard to the representation relating to both Convention No. 87 and Convention No. 158 in a communication dated 9 October 2019.

8. In the light of the conclusions set out in Appendices I and II, the two Committees established to examine this representation recommend that the Governing Body approve their recommendations as reflected in the draft decision below.

▶ Draft decision

9. **The Governing Body:**

(a) on the recommendation of the Committee set up to examine the representation alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87):

(i) approved the report of the Committee in Appendix I of document GB.341/INS/13/5;

(ii) requested the Government to take into account in the context of the application of Convention No. 87, the observations made in paragraphs 17–31 of the Committee's conclusions and in particular, in paragraph 31, wherein the Committee urged the Government that a full, independent and impartial review be made with regard to all those workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions;

(iii) invited the Government to provide information in that respect for examination by the Committee of Experts on the Application of Conventions and Recommendations (CEACR); and

(iv) made the report publicly available and closed the representation procedure.

(b) on the recommendation of the Committee set up to examine the representation alleging non-observance by Turkey of the Termination of Employment Convention, 1982 (No. 158):

(i) approved the report of the Committee in Appendix II of document GB.341/INS/13/5;

(ii) requested the Government to take into account, in the context of the application of Convention No. 158, the observations made in paragraphs 34 and 35 of the Committee's conclusions;

(iii) invited the Government to provide information in that respect for examination and further monitoring, as appropriate, by the CEACR; and

(iv) made the report publicly available and closed the representation procedure.

Appendix I

Report of the Committee set up to examine the representation alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

I. Introduction

1. Following the decision taken by the Governing Body at its 335th Session (March 2019), for the examination of the elements of the representation alleging non-observance of Convention No. 87, the Committee on Freedom of Association designated the following members to examine the representation: Ms Valérie Berset Bircher (Government member, Switzerland), Ms Renate Hornung-Draus (Employer member) and Mr Yves Veyrier (Worker member).

2. The Committee adopted the present report on 9 March 2021.

II. Examination of the representation

A. The complainant's allegations

3. In its communications dated 4 July and 27 November 2017, the Action Workers' Union Confederation (Aksiyon-Is) alleges that following the failed coup attempt in July 2016, it was dissolved and thousands of its members dismissed pursuant to decrees with the force of law.

4. By way of general background, the complainant alleges that after the failed coup attempt of 15 July 2016, citizens and non-governmental organizations with no connection with the coup became the target of the ruling Government. Thousands of employees had been dismissed and pronounced guilty of association with the terrorist organization by legislative decrees issued within the scope of the state of emergency, without any supervision of the Parliament or judicial bodies, without any investigation, and with disregard for the principle of presumption of innocence and the rights afforded by ILO Conventions. According to the complainant, those dismissed had no opportunity to defend themselves, nor did they know what crimes they were charged with. Citizens learned whether they were "terrorists" from the *Official Gazette*. They received no compensation and suffered a "civil death". Tens of thousands had filed cases regarding closure of organizations and dismissals in domestic courts, but the latter claimed that they are not competent to examine such complaints. The complainant indicates in this regard that the Secretary-General of Aksiyon-Is made an application in relation to the issues raised in the representation to the Administrative Court of Ankara, but the application was declined without any proper investigation. The complainant points out that the time to seek domestic legal remedies had now expired and that the ILO was their last resort.

5. Aksiyon-Is explains that it was an umbrella confederation to 18 unions, with a total membership of over 29,000 members. It points out that during the coup attempt on 15 July 2016, its unions explicitly condemned the coup attempt. However, together with nine of its unions (PAK GIDA, PAK MADEN IS, PAK FINANS IS, PAK EGITIM IS, PAR TOPRAK IS, PAK METAL IS, PAT ENERGI IS, PAK TASIMA IS, PAK DENIZ IS) the Confederation was closed and dissolved by administrative authority pursuant to Decree-Law No. 667. It

further alleges that all trade union property was confiscated. The complainant indicates that its other unions (PAK PETROL IS, PAK TEKSIL IS, PAK AGAC IS, PAK MEDYA IS, PAK INSAAT IS, PAK SAGLIK IS, PAK TURIZM IS, PAK SAVUNMA IS, PAK HIZMET IS) were closed later on the instructions of the Governorate.

6. The complainant further alleges that its members were subjected to a mass mistreatment campaign: only because they were members of the union, the workers were dismissed, detained, and deprived of the opportunity to find other jobs and their right to compensation and pension. The complainant considers that the Government legitimized rights violations through the use of a state of emergency and further alleges that under the fear spread by the State, people could no longer claim their most fundamental rights. Fearing that they were going to be treated in an inhuman way, people did not file lawsuits.

7. The complainant alleges that after the closure of workplaces, its members in the following fields became unemployed and incapacitated in terms of their basic human rights: education (24,002 members), food (532 members), media (789 members), finance (97 members), health (356 members), tourism (983 members) and services (534 members). In addition, the teaching certificates of its 24,002 members who worked in private schools and training centres were cancelled and because of the fact that the trustees were assigned to many of the private workplaces, trade union members were fired without trial and in violation of their rights to severance and notice pay. According to the complainant, in total, 29,579 members of the Confederation lost their jobs and the dismissed trade union members were deprived of the opportunity to find other jobs and to receive compensation and pension. The complainant points out that the Government dismissed thousands of its members solely due to the fact that they were members of the union.

8. The complainant further indicates that its Chairperson, the Chairpersons of PAK MADEN IS, PAK TEKSIL IS, PAK EGITIM IS, PAK TASIMA IS, PAK SAGLIK IS and PAK HIZMET IS, as well as many members of administrative committees were imprisoned; many other trade union leaders had to go abroad (Chairpersons of PAK AGAC IS, PAK TURIZM IS and PAK METAL IS, as well as the Secretary-General of Aksiyon-Is). Many trade union members had to seek refuge in European countries. The complainant points out that in the current circumstances it was impossible to give the exact number of imprisoned trade union leaders and members or of those who were forced to move abroad.

B. The Government's observations

9. In its communication dated 9 October 2020, the Government provides the following observations.

10. The Government emphasizes that the main ground for the dissolution of Aksiyon-Is and its affiliated trade unions was that, in its belief, they were connected to the so-called Fethullahist Terrorist Organization (FETÖ/PDY). According to the Government, it was the FETÖ/PDY which perpetrated the armed coup attempt that claimed 251 lives and caused injury to well above 2,000 innocent people on 15 July 2016.

11. The Government indicates that following the failed coup attempt, the Council of Ministers declared a state of emergency as of 21 July 2016 in accordance with article 120 of the Constitution, which empowered the Government to declare a state of emergency due to widespread acts of violence and the serious deterioration of public order, and article 3 of State of Emergency Law No. 2935. The decision of the Council of Ministers was approved by the Turkish Grand National Assembly on 21 July 2016.

12. The Government explains that under article 121 of the Constitution, the Government had the power to issue decrees having the force of law on matters necessitated by a state of emergency. In accordance with the Constitution and Law No. 2935, on 22 July 2016, the Council of Ministers decided to take measures in the context of a state of emergency by publishing Decree-Law No. 667 in the *Official Gazette* on 23 July 2016. Accordingly, unions, federations and confederations which belonged to, were connected to, or had contact with the FETÖ/PDY, determined as posing a threat to national security, were closed down on 23 July 2016. According to the Government, by supporting the coup attempt, acting in contradiction to the purpose of their establishment, i.e. serving the economic interests of employees or employers, these unions acted in violation of the national legislation. The confiscation of trade union assets was therefore not the result of their lawful activities but rather related to the economic and actual support given to the coup process. The Government points out that the dissolution of the complainant organization and its affiliated trade unions was in no way related to or based on any of their legitimate trade union status or activities. According to the Government, the state of emergency laws aimed at eliminating anti-social divisive elements had not been applied to employees exercising their legal trade union rights. During this period, unions exercised their right to organize and bargain collectively, and many collective bargaining agreements were signed during the state of emergency without prejudice to the economic rights and interests of employees.

13. The Government indicates that Aksiyon-Is and its affiliated trade unions, which had been dissolved by the State of Emergency Decree, had the right to apply to the Inquiry Commission for a review of their dissolution. The Government explains that the legal procedure in force required the dissolved organizations or persons dismissed pursuant to the Decree to first apply to the Inquiry Commission before bringing their case to the courts. Thus, the complainant could apply to the Administrative Courts of Ankara only against the decisions of the Inquiry Commission. The Government underlines that the dissolution directly through the Decree was a measure applied only during the state of emergency and that all judicial recourse avenues were 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.

14. In this respect, the Government points out that Aksiyon-Is and its affiliated trade unions did not file any application to the Inquiry Commission for review of the dissolution and thus had not used all available domestic channels and remedies. Most of the members and executives of the dissolved complainant organization and its affiliated trade unions left the country without resorting to national remedies. The judicial process involving those detained in the country continued; these persons could make their defence within the framework of the existing legal rules and to that end had access to a lawyer. Those who were arrested on the grounds of being supporters of the coup attempt were sentenced on the basis of the evidence and those who completed their sentence were released.

15. The Government indicates that the Decree issued during the state of emergency may have limited individual rights and freedoms within the framework of article 15 of the Turkish Constitution and Article 15 of the European Convention on Human Rights. The Government further refers in this respect to Article 8 of Convention No. 87 and relevant considerations of the Committee on Freedom of Association. The Government expresses the view that the restrictions should be in conformity with the principle of proportionality.

16. The Government refers to the relevant provisions of the Constitution of the Republic of Turkey (Preamble, article 15 on suspension of the exercise of fundamental rights and freedoms and article 26 on freedom of expression and dissemination of thought) as well as Law No. 6356 on Trade Unions and Collective Labour Agreements, Anti-Terror Law No. 3713 of 12 April 1991, Penal Code (No. 5237), Criminal Procedure Law No. 5271, Law No. 7075 on Amendment and Adoption of the Decree with the Force of Law on the Establishment of the Inquiry Commission on the State of Emergency Measures, and Law No. 6749 on Amendment and Adoption of the Decree with the Force of Law on the Measures Taken within the Scope of the State of Emergency.

C. The Committee's conclusions

17. The Committee notes that Aksiyon-Is alleges that it and its affiliated unions were subjected to administrative dissolution by the authorities and its property confiscated on the basis of Decree-Law No. 667. The Committee further notes the allegation of numerous dismissals of workers due to their membership in the dissolved trade unions pursuant to the Decrees with the force of law, issued within the scope of the state of emergency following the coup attempt in July 2016, without any supervision of the Parliament or judicial bodies, without any investigation, and with disregard for the principle of presumption of innocence and the rights afforded by ILO Conventions. The Committee notes the complainant's allegation that the time to seek domestic legal remedies has now expired.

18. The Committee notes that in its reply, the Government acknowledges the dissolution of Aksiyon-Is and its affiliated trade unions following the coup attempt on 15 July 2016. The Government maintains that the main ground for the dissolution was the affiliation of Aksiyon-Is to the so-called Fethullahist Terrorist Organization (FETÖ/PDY), which allegedly carried out the coup attempt. The Government argues that these unions acted in violation of national law by acting in contradiction to the purpose for which they were established and moving away from the principle of serving the economic interests of workers or employers by supporting the coup attempt. It adds that the confiscation of their assets related not to the unions' lawful activities, but rather to the alleged economic and actual support given to the coup process.

19. The Committee notes that the Council of Ministers declared a state of emergency as of 21 July 2016 pursuant to article 120 of the Turkish Constitution and in accordance with article 3 of the State of Emergency Act No. 2935. This decision was taken as a result of and in response to the failed military coup attempt on 15 July 2016. One of the implications of the state of emergency was that the legislative authority, which under normal circumstances belongs to the Parliament, was also granted to the Council of Ministers for the matters necessitated by the state of emergency. By way of such authorization, the executive body became entitled to issue Decrees with the force of law, with respect to matters necessitated by the state of emergency, without following the Parliament's ordinary legislative procedures. Such Decrees stand in equal position with the laws under the hierarchy of norms. The first such Decree adopted by the Council of Ministers was published in the *Official Gazette* dated 23 July 2016 as Decree-Law No. 667. Pursuant to article 2(1)(d) of the Decree, trade unions, which belong to, connect to, or have contact with the FETÖ/PDY, which were determined as posing a threat to national security, were closed down on 23 July 2016. All movable and immovable properties, assets, rights and receivables of the closed organizations have been transferred to the Treasury. The Committee notes from the publicly available 2019 Activity Report of the Inquiry Commission that in total, 19 unions were closed pursuant to Decree-Law

No. 667. [1] The complainant organization together with its affiliates were among the closed trade unions.

20. The Committee further notes that the Inquiry Commission on the State of Emergency Measures was established by Decree-Law No. 685 and began functioning on 22 May 2017 in order to assess and conclude the applications concerning dismissals and closure of organizations which were carried out directly by the Decrees within the scope of the state of emergency. Pursuant to article 7.3 of Decree-Law No. 685, applications must be filed with the relevant governorate or the institution where the applicant worked within 60 days from the entry into function of the Commission or of the entry into force of the Decree Laws, if they came into force after the establishment of the Commission. The decisions of the Inquiry Commission, an administrative body, [2] can be appealed against before designated Ankara administrative courts. [3] According to the Government, the decisions of the administrative courts can be then challenged before the Constitutional Court by individual petition and an individual aggrieved by the decision of the Constitutional Court can submit a complaint to the European Court of Human Rights.

21. The Committee observes that that the European Court of Human Rights in its June 2017 decision in *Köksal v. Turkey* (Application No. 70478/76) dismissed the applicant's application for failure to exhaust domestic remedies, finding that the Inquiry Commission established by Decree-Law No. 685 of January 2017 constituted a domestic remedy, because, among others, its decisions can be reviewed by the judiciary. It found, however, that the burden of proof as to the effectiveness of this remedy is on the respondent State. The Committee notes that the *Köksal* case concerned the dismissal of a worker from the public service pursuant to an administrative decree with the force of law.

22. The Committee recalls, however, that the closure of a trade union by an executive authority pursuant to a decree conferring to it full powers, like the closure of a union by an administrative authority is a priori a violation of Article 4 of Convention No. 87, [4] a fundamental Convention, and thus invokes a possible violation of human rights. In such cases, and unlike cases of dismissals more generally, the question of the effectiveness of the Inquiry Commission, which, pursuant to Decree-Law No. 685 is also competent to examine cases of closure of organizations, would necessarily be secondary. Given that the individual dismissals are seen as justified by the dissolution of the trade union under the Decree, they can only be effectively reviewed once the Inquiry Commission has already first reviewed the dissolution itself; a matter which is dependent on the trade union itself and not on the individual dismissed worker.

23. The Committee considers that the administrative dissolution of trade union organizations constitutes a clear violation of Article 4 of Convention No. 87. [5] Furthermore, the Committee is of the view that the dissolution by the executive branch

[1] Presidency of the Republic of Turkey, *The Inquiry Commission on the State of Emergency Measures: Activity Report*, 2019, 9.

[2] *Inquiry Commission: Activity Report*, 2019, 5.

[3] Article 11(1) of Decree-Law No. 685.

[4] Article 4 of Convention No. 87: "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority".

[5] See also ILO, *General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, ILC.101/III/1B, 2012, para. 162. In addition, the Committee on Freedom of Association (CFA) reached similar conclusions in a number of country-specific cases, see ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth ed. (2018), paras 986 and 987.

of the government pursuant to a law conferring full powers, or acting in the exercise of legislative functions, like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee. [6] Noting that under a legal provision, the registration of existing trade unions was cancelled, the Committee considers essential under Article 4 that any dissolution of workers' or employers' organizations can only be carried out by the judicial authorities, which alone can guarantee the rights of defence. This principle in the Committee`s view is equally applicable when such measures of dissolution are taken even during an emergency situation. [7] Further in this respect, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2018 observation concerning the application by Turkey of Convention No. 87 recalled that the dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution.

24. Regarding the issue of judicial review of dismissals following a state of emergency, the Committee observes, however, that in its judgment dated 17 November 2020 in the case *Pişkin v. Turkey* (Application No. 33399/18), the European Court of Human Rights held that the right of the applicant to an effective remedy had been violated as the national courts had not carried out a thorough examination of the petitioner's appeal against the dismissal decision, nor had they based their reasoning on any evidence presented by the petitioner or given any valid reasons for dismissing his appeal. The Committee is therefore bound to query to what extent the judicial review of the measures taken pursuant to the Decrees with the force of law, issued within the scope of the state of emergency, complies with due process and ensures the right to a fair trial.

25. The Committee further notes from the 2019 Activity Report of the Inquiry Commission that no application was brought to it regarding the closure of the 19 unions. [8] While noting the Government's indication that the representatives of such organizations have failed to file applications with the Inquiry Commission, the Committee also notes that trade union leaders and members were imprisoned, and that the funds of the dissolved trade unions were seized pursuant to the Decrees with the force of law, which may have limited the unions' capacity to effectively have their claims presented before the Commission. The Committee understands that the time for filing an application challenging the closure of the union has now elapsed.

26. The Committee notes that the above-described state of the matter resulted in a situation where it would now appear to be impossible to bring the measures taken against the trade union organizations, i.e. the determination of their affiliation, connection or contact with the FETÖ/PDY, and their dissolution itself before a normal judicial procedure. Furthermore, the Government itself does not provide any explanation or details concerning the actions of the trade unions, including the complainant organization, justifying their dissolution, other than a declaration set out in Decree-Law No. 667 indicating that they belonged to, or were connected to, or had contact with the FETÖ/PDY, a declared terrorist organization.

[6] 2012 *General Survey*, para. 162. In addition, the CFA adopted similar conclusions in a number of country-specific cases, see ILO, *Compilation of decisions*, 2018, para. 993.

[7] The CFA reached similar conclusions in country-specific cases, see ILO, *Compilation of decisions*, 2018, para. 994. See also para. 304.

[8] *Inquiry Commission: Activity Report*, 2019, 9.

27. The Committee further notes that simply being a member of a trade union closed in this manner is considered as evidence of links of the individual with the FETÖ/PDY, as supporting the coup process, and thus justifying their dismissal, despite the fact that these trade unions had been constituted and were operating lawfully until the state of emergency. The Committee concludes that these workers were punished for their membership in a trade union, without any need for proof of specific action or involvement or even knowledge that they may have had about a possible affiliation with a terrorist organization. In other words, these workers were punished for having exercised their right to join organizations of their own choosing guaranteed by Article 2 of Convention No. 87 without any possibility of review of their individual situation.

28. The Committee notes with concern that in cases brought by individuals dismissed due to their membership in a trade union associated with the FETÖ/PDY, the Inquiry Commission did not review the legality of the closure of the relevant trade union [9] or any of the individual's own activities. Membership in a closed union was simply proved, for example, by information showing that trade union dues were deducted from an applicant's salary and considered to be sufficient ground to reject an application against the dismissal.

29. With regard to the cases of dismissal on the ground of membership in the closed unions, the Committee refers to the considerations of the tripartite Committee established to examine the representation of non-observance by Turkey of the Termination of Employment Convention, 1982 (No. 158), and recalls that the right to an effective remedy is one of the most significant guarantees which ensures the rule of law. The Committee considers that to be effective, a remedy should provide for a full examination of both facts and points of law and should prevent the alleged violation or its continuation. In line with this principle, the Committee considers that a judicial review of the dissolution of the trade union organizations concerned should have been conducted prior to or at the time of examining the legality of the dismissals and that the individual workers should have had the opportunity to be heard concerning their specific actions and whether these could be linked to an unlawful activity.

30. The Committee notes that Aksiyon-Is alleges that its Chairperson, the Chairpersons of PAK MADEN IS, PAK TEKSIL IS, PAK EGITIM IS, PAK TASIMA IS, PAK SAGLIK IS, and PAK HIZMET IS, as well as many members of administrative committees, were imprisoned. The Committee regrets that the Government provides no information in this respect and considers that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association under Convention No. 87. The Committee stresses the importance that should be attached to the right of freedom and security of person and freedom from arbitrary arrest and detention, as well as to the right to a fair trial by an independent and impartial tribunal, in accordance with the provisions of the Universal Declaration of Human Rights. [10]

31. *The Committee urges the Government to take the necessary measures to ensure that the dissolution of trade unions pursuant to Decree-Law No. 667 is reviewed through the normal judicial procedures, which should also enable those unions to be able to be fully represented to defend their case. Should the judicial authorities determine that the dissolution was unlawful and that there was insufficient proof submitted linking them to a terrorist*

[9] See sample decision of rejection attached to the *Inquiry Commission: Activity Report*, 2019.

[10] See also 2012 *General Survey*, paras 59 and 60. The CFA reached a similar conclusion in a number of country-specific cases, see ILO, *Compilation of decisions*, 2018, para. 160.

organization and involvement in terrorist activity, their property should be restored enabling them to operate immediately. The Committee further urges that a full, independent and impartial review be made with regard to all those workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions in order to determine whether, independently of their membership in such unions, they had carried out any unlawful activity that would justify their dismissal. In the event that it is found that there is insufficient evidence to justify their dismissal, the workers concerned should be reinstated or where this is found not to be possible due to the time that has elapsed, should be provided appropriate compensation and remedy for the reprisals suffered, the retraction of any instructions given to blacklist them and the return of any passports confiscated. Finally, the Committee expects that the imprisoned trade unionists receive a swift and impartial trial and requests the Government to submit copies of the relevant judgments to the CEACR.

III. The Committee's recommendations

32. **The Committee recommends that the Governing Body:**

(a) approve the present report;

(b) request that the Government, in the context of the application of Convention No. 87, take into account the observations made in paragraphs 17–31 of the Committee's conclusions and in particular, in paragraph 31, wherein the Committee urged the Government that a full, independent and impartial review be made with regard to all those workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions;

(c) invite the Government to provide information in this respect for examination by the Committee of Experts on the Application of Conventions and Recommendations; and

(d) make this report publicly available and close the present representation procedure.

9 March 2021

(*signed*)

Government member: Valérie Berset Bircher

Employer member: Renate Hornung-Draus

Worker member: Yves Veyrier

▶ Appendix II

Report of the Committee set up to examine the representation alleging non-observance by Turkey of the Termination of Employment Convention, 1982 (No. 158)

I. Introduction

1. Following the decision taken at its 335th Session (March 2019), for the examination of the elements of the representation alleging non-observance of Convention No. 158, the Governing Body appointed the following members of the ad hoc tripartite committee: Mr Niklas Bruun (Government member, Finland); Ms Renate Hornung-Draus (Employer member, Germany); and Mr Magnus Norddahl (Worker member, Iceland).
2. The Committee adopted the present report on 9 March 2021.

II. Examination of the representation

A. Allegations

3. In its communication of 4 July 2017, Aksiyon-Is alleges that the Government of Turkey failed to respect the provisions of the Termination of Employment Convention, 1982 (No. 158), both prior to and following an attempted coup that took place in the country on 15 July 2016. Aksiyon-Is maintains that, following the attempted coup, the Government dismissed hundreds of thousands of Turkish workers, including thousands of its own members by legislative decree, on the grounds that they were terrorists who had acted in support of the coup attempt.
4. Aksiyon-Is maintains that thousands of its members were dismissed from their jobs in the absence of a valid reason connected with their capacity or conduct and that the dismissals were due solely to their membership in the trade union confederation, in violation of Articles 4 and 5 of Convention No. 158.

   Article 4 provides that:

   > The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

   Article 5 provides that:

   > The following, *inter alia*, shall not constitute valid reasons for termination:
   >
   > (a) Union membership ….

5. Aksiyon-Is points out that some of its dismissed members were previously employed in companies, organizations and foundations perceived by the Government as antagonistic for political and religious reasons. It alleges that administrators were appointed to the targeted companies and that, shortly after their appointment, the administrators proceeded to close and terminate the companies’ activities on the basis that they “demonstrated an attitude of bad faith, acting in a way contrary to trade”. The workers concerned were dismissed by the appointed administrators using this approach, without compensation or the right to appeal their dismissals. Aksiyon-Is adds that these

dismissals took place prior to the attempted coup, without prior investigation and in the absence of due process.

6. Aksiyon-Is further maintains that the thousands of workers dismissed following the attempted coup were dismissed in the absence of due process. Specifically, Aksiyon-Is maintains that the workers were not informed of the accusations against them and that the Government terminated the workers concerned by legislative decrees published in the Turkish *Official Gazette* that branded them as terrorists, thereby denying them the opportunity to be heard and to present a defence prior to dismissal, in violation of Article 7 of the Convention. It further contends that the dismissals were carried out without prior investigation and that the general legal principle of the presumption of innocence was not applied in the circumstances.

7. Article 7 of the Convention provides that:

> The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

8. In addition, Aksiyon-Is alleges that the dismissed workers were not provided with the opportunity to appeal their dismissals to a neutral body, in violation of Article 8(1) of Convention No. 158, which provides that:

> A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

9. In this context, Aksiyon-Is contends that the Government pronounced the dismissed workers to be "terrorists" in the legislative decrees published in the *Official Gazette*, without prior investigation or judicial examination. It points out that, in this manner, the dismissed workers could not challenge their dismissals by submitting them to any judicial body and were unable to secure alternative employment. Aksiyon-Is adds that, while thousands of dismissed workers filed cases in Turkish courts challenging their dismissals, the courts declined to examine those cases. Aksiyon-Is points out that the claim it lodged contesting its closure and confiscation of its assets was refused by the administrative court of Ankara for lack of jurisdiction, and that the domestic channels for seeking legal redress have now expired.

10. Aksiyon-Is maintains that neither the member workers dismissed from their employment by legislative decree, nor those working for the seized or closed companies, whose assets were allegedly confiscated by the Government, received any compensation upon termination, such as severance allowances, pay in lieu of notice, or any other termination indemnities. It adds that, in the circumstances, its members and affiliates lost their accrued pension and healthcare rights and benefits, despite having paid their pension and health premiums for years. In the circumstances, Aksiyon-Is submits that the dismissals of its members and affiliates violated Article 12 of the Convention, which provides, in pertinent part, that:

> A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to:
>
> (a) a severance allowance or other separation benefits…; or
>
> (b) benefits from unemployment insurance or assistance or other forms of social security …; or
>
> (c) a combination of such allowance and benefits.

11. Aksiyon-Is also maintains that, due to the Government's actions in connection with the massive dismissals, the dismissed workers have been blacklisted, subjected to hate speech and to "civil death" in that they have been precluded from securing alternative employment.

12. Aksiyon-Is provided additional information concerning its allegations in a subsequent communication dated 25 July 2017, which attached: a copy of the Statutes of Aksiyon-Is in Turkish; a copy of the minute book of Aksiyon-Is dated 19 November 2014; a copy of the Aksiyon-Is Confederation Election Record; and a copy of its authorization. Also attached to the communication of 25 July 2017 was a press release dated 24 July 2016 concerning measures taken by the Government to shut down, inter alia, nine unions affiliated with Aksiyon-Is, [1] as well as unions affiliated to the CIHAN-SEN Confederation.

13. Subsequently, in a communication dated 27 November 2017, Aksiyon-Is transmitted a document reflecting statistics from the Ministry of Labour and Social Security, on the basis of which it points out that, at the time of its closure, Aksiyon-Is associated 18 unions and had 29,636 members. According to this communication, Aksiyon-Is, as well as its nine affiliated unions, were closed and all their properties were confiscated, pursuant to Decree-Law No. 667 of 20 July 2016. Aksiyon-Is adds that the rest of its affiliates were also closed down pursuant to instructions issued by the Government.

14. Aksiyon-Is alleges that the closures resulted in the dismissal of its 29,579 members. It maintains that the Government took additional actions in relation to the dismissals, including the cancellation of 24,002 teaching certificates held by its members, thereby depriving them of the ability to continue to work. It further maintains that its chairpersons and those of six of its affiliates, as well as members of its board, were detained and imprisoned, with some having been compelled to go abroad to seek refuge.

15. According to the allegations, approximately 150,000 workers and public officials were dismissed from their employment through legislative decree and an additional 10,000 persons were dismissed by administrators appointed before the Decrees were issued. The dismissals took place in the absence of any investigation, without due process and without informing the workers concerned of the accusations against them. Instead, the legislative Decrees published in the *Official Gazette* determined whether or not the Government considered the dismissed workers to be terrorists. As a result of this determination, the workers concerned received no compensation or other termination indemnities, nor were they afforded the right to appeal their dismissal to a neutral authority. In support of this allegation, Aksiyon-Is annexed to its communication of 4 July 2017 a decision issued by the 6th Administrative Court of Ankara to its communication. In its decision, the Court declined to review the application lodged by Aksiyon-Is on the basis that Decree-Law No. 667 did not give the Court jurisdiction to examine matters arising from its application. Aksiyon-Is contends that this situation effectively precluded it from seeking redress on behalf of its members.

B. The Government's observations

16. On 9 October 2019, the Government provided its observations regarding the representation made by Aksiyon-Is. In its reply, the Government acknowledges that it dissolved Aksiyon-Is and its affiliated trade unions following the armed coup attempt on

[1] The nine affiliated unions referenced by Aksiyon-Is are: PAK GIDA; PAK MADEN IS; PAK FINANS IS; PAK EGITIM IS; PAR TOPRAK IS; PAK METAL IS; PAT ENERGI IS; PAK TASIMA IS; and PAK DENIZ IS.

15 July 2016. It indicates that the main ground for the dissolution was the affiliation of Aksiyon-Is to the Fethullahist Terrorist Organization (FETÖ/PDY), the organization that the Government maintains carried out the coup attempt.

17. The Government explains that, in the wake of the coup attempt on 21 July 2016, the Council of Ministers declared a state of emergency, in accordance with article 120 of the Turkish Constitution and article 3 of the State of Emergency Act No. 2935. This decision was approved by the Turkish Grand National Assembly on the same date. The Government further cites article 121 of the Turkish Constitution, pursuant to which it is empowered to issue decrees having the force of law on matters necessitated by the state of emergency.

18. Subsequently, on 23 July 2016, the Council of Ministers published the Decree with the Force of Law No. 667 regarding the measures to be taken under the state of emergency (hereinafter “Decree-Law No. 667”) in the *Official Gazette*. The Government explains that, pursuant to Decree-Law No. 667, unions, federations and confederations which belong to, connect to, or have contact with the FETÖ/PDY, which were determined as posing a threat to national security, were closed down as of 23 July 2016 and their assets were confiscated. The Government adds, however, that Aksiyon-Is and its affiliated trade unions, which had been dissolved by the State of Emergency Decree, had the right to apply to the Inquiry Commission for a review of their dissolution. The Government explains that the legal procedure in force required the dissolved organizations or persons dismissed pursuant to the Decree to first apply to the Inquiry Commission before bringing their case to the courts.

19. In its observations, the Government points out that Decree-Law No. 667 may limit individual rights and freedoms within the framework of article 15 of the Turkish Constitution and Article 15 of the European Convention on Human Rights. It also refers in this respect to Article 8 of Convention No. 87, as well as to relevant considerations of the Committee on Freedom of Association. The Government adds that the restrictions should be in conformity with the principle of proportionality.

20. The Government maintains that the unions concerned acted in violation of national law by acting in contradiction to the purpose for which they were established, and moving away from the principle of serving the economic interests of workers or employers by supporting the coup attempt. It adds that the confiscation of their assets relates not to the unions’ lawful activities, but rather to the economic and actual support given to the coup process. It emphasizes that the dissolution of Aksiyon-Is and its affiliated trade unions are not related to or based in any way on their legitimate trade union status or activities.

C. Conclusions of the Committee

21. The Committee notes that Aksiyon-Is alleges that the Government of Turkey dismissed thousands of workers, including all 29,579 of its members, in violation of Convention No. 158. Aksiyon-Is refers to dismissals that took place both prior to the attempted coup and those that took place following the issuance of Decree-Law No. 667. All these dismissals, Aksiyon-Is contends, were carried out without prior investigation and in the absence of due process and were based solely on membership in the trade union confederation, in violation of Articles 4 and 5 of Convention No. 158.

22. Aksiyon-Is contends that by blanketly categorizing them as terrorists, the workers were precluded from the opportunity of defending themselves prior to dismissal, in violation of Article 7 of the Convention. Aksiyon-Is further alleges that the dismissed workers were

not provided with the opportunity to appeal their dismissals to a neutral body, in violation of Article 8 of the Convention. Aksiyon-Is adds that none of the member workers dismissed received compensation upon termination, such as severance allowances, pay in lieu of notice, or any other termination indemnities, in violation of Article 12 of the Convention. Moreover, in the circumstances, its members and affiliates lost their accrued pension and healthcare rights and benefits. Aksiyon-Is adds that, due to the Government's actions in connection with the massive dismissals, the dismissed workers have been blacklisted and precluded from securing alternative employment.

23. The Committee notes the Government's reply that, following the attempted coup of 15 July 2016, a state of emergency was declared in accordance with the Turkish Constitution, with the objective of eliminating the threat against the democratic order, and the state of emergency decrees were issued to remove the members of the organization. The Government refers to article 4 of Decree-Law No. 667, which provides that all state officials who are considered to have affiliation, membership or connection to terrorist organizations and groups designated by the National Security Council as engaged in activities against the national security shall be dismissed from public service pursuant to judicial or disciplinary sanctions, as an extraordinary and final measure aiming to remove the existence of terrorist organizations and other structures considered as acting against national security. The Government further refers to the establishment of the Inquiry Commission to Review the Actions Taken under the State of Emergency. The Inquiry Commission is charged with examining and evaluating, inter alia, the applications of persons dismissed or discharged from their functions, as well as from trade unions, federations and confederations dissolved directly through the state of emergency decrees.

24. The Committee notes the 2019 Activity Report of the Inquiry Commission, published by the Presidency of the Republic of Turkey (hereinafter "the 2019 Report"), [2] which indicates that the Inquiry Commission was established by Decree-Law No. 685 and began functioning on 22 May 2017. The 2019 Report states that the Inquiry Commission's mandate is to assess and conclude applications concerning the measures carried out under the decree laws within the scope of the state of emergency, including: dismissal or discharge from the public service, profession or organization in which the persons took office; cancellation of scholarships; annulment of the ranks of retired personnel; and closure of associations, foundations, trade unions, federations, confederations, private medical institutions, private schools, foundation and higher education institutions, private radio and television institutions, newspaper and periodical publications, news agencies, publishing houses and distribution channels. [3] The 2019 Report further states that Decree-Law No. 685 was enacted pursuant to Law No. 7075 on the Amendment and Adoption of the Decree-Law on the Establishment of the Inquiry Commission on the State of Emergency Measures. The 2019 Report indicates that the Inquiry Commission carries out its examinations and assessments on the applications in accordance with the procedures and principles established by Law No. 7075 and the relevant notification, and that "the Commission's approach for the assessments focuses mainly on identifying whether individuals have acted in line with the order and instructions of the [terrorist] organisation." [4] The Committee notes that,

[2] Available at https://soe.tccb.gov.tr/Docs/OHAL_Report_2020.pdf.

[3] 2019 Report, 1.

[4] 2019 Report, 19.

as of 23 January 2020, the term of Office of the Inquiry Commission was extended for a period of one year under article 3 of Law No. 7075. [5]

25. According to the 2019 Report, 126,300 applications had been filed with the Inquiry Commission as of 31 December 2019. Over the past two years, the Commission has delivered 98,300 decisions, constituting 78 per cent of the total number of applications filed. The Committee notes from the 2019 Report that, of these decisions, 90 per cent (88,700) were rejected. [6]

26. In this context, the Committee notes the decision of the European Court of Human Rights (ECHR), in the matter of *Köksal v. Turkey* (Application No. 70478/16). That case involved an individual who had been dismissed pursuant to Decree-Law No. 667 following the declaration of the state of emergency, and examined the issue of whether the applicant had exhausted the domestic remedies available to him. The Court noted that, following the filing of the application in *Köksal*, Decree-Law No. 685, published on 23 January 2017, had made available the possibility of scrutiny by the newly created Inquiry Commission, of the measures adopted under the state of emergency, as well as the possibility of subsequent judicial review of the commission's decisions. The ECHR found that the applicant therefore had a new remedy. However, the Court observed that this conclusion did not prejudge a possible re-examination by the ECHR, if necessary, of the issue of the "effectiveness and reality of the remedy introduced by Decree-Law No. 685, both in theory and in practice, in the light of the decisions rendered by the Commission and the domestic courts and of the effective enforcement of those decisions". [7] On this basis, the Court dismissed the application as inadmissible due to failure to exhaust domestic remedies.

27. The Committee further notes the decision of the ECHR handed down on 15 December 2020 in *Pişkin v. Turkey* (Application No. 33399/18). [8] That case concerned the dismissal of an expert employed by a public service agency. The application was dismissed under article 4(1)(g) of Decree-Law No. 667, in the aftermath of the alleged coup. The Court noted that article 4(1) applies to "persons considered as belonging, affiliated or linked to terrorist organizations or structures, formations or groups which the National Security Council has determined are involved in activities prejudicial to the national security of the State", whereas subsection (g) provides for a simplified dismissal procedure according to which "personnel employed in all kinds of posts, positions and status (including workers), in institutions affiliated or related to a ministry, are dismissed from the civil service upon the proposal of the head of unit, with the approval of the director of the recruitment department". [9] In addition, article 4(2) provides that persons dismissed according to this procedure cannot be employed again in the civil service. [10] The applicant maintained that neither the procedure leading up to his dismissal, nor the judicial review of the dismissal at the national level had complied with the guarantees of a fair trial, including the principles of equality of arms and adversarial proceedings. He alleged that he had been dismissed without prior investigation and had not been accorded the right of defence or been informed of the grounds for his dismissal and that,

[5] 2019 Report, 3.

[6] 2019 Report, 3.

[7] *Köksal v. Turkey*, Application No. 70478/16, para. 29 (in French).

[8] *Pişkin v. Turkey,* Application No. 33399/18, 15 December 2020.

[9] *Pişkin*, para. 33.

[10] *Pişkin*, para. 33.

moreover, the subsequent judicial proceedings had not remedied these shortcomings. [11] The ECHR noted that the applicant had not been provided with information concerning the reasons for his dismissal. Moreover, Decree-Law No. 667 required public institutions such as the one that employed the applicant to dismiss civil servants under a simplified procedure where the employer considered the employee as belonging, affiliated or linked to one of the allegedly illegal structures defined in the Decree, without the need to provide any personalized justification. The Court noted that the issue was whether the petitioner's lack of information regarding the reasons for his dismissal had been sufficiently counterbalanced by an effective judicial review of the dismissal decision. In its finding, the ECHR concluded that the domestic courts had not carried out a thorough examination of the applicant's appeal against the dismissal decision, nor had they based their reasoning on any evidence presented by the applicant or given any valid reasons for dismissing his appeal. The ECHR found that the domestic courts had failed to undertake a real or serious investigation and did not determine the real reasons why the applicant's employment contract had been terminated. It concluded that the judicial review of the dismissal had therefore been inadequate. Moreover, the Court found that the dismissal could "not be said to have been strictly required by the special circumstances of the state of emergency", concluding that the failure to comply with due process and respect the applicant's right to a fair trial could not be justified by the declaration of a state of emergency. [12]

28. The Committee considers that the Court's assessment of the adequacy of judicial review within the context of dismissal carried out under the emergency decrees is of relevance to the issues raised in this representation. It notes with concern that the workers affiliated to Aksiyon-Is were deemed by the Government to be terrorists on the basis of alleged links with a terrorist organization merely due to their association with the trade union confederation. The workers were summarily dismissed pursuant to Decree-Law No. 667 due to this association, without being informed of the reasons for their dismissal and without being afforded the opportunity to defend themselves prior to the dismissal. The Committee stresses that, even in an emergency situation, alternative measures could reasonably have been taken to avoid dismissing the individual workers prior to completion of the procedural safeguards set out in Convention No. 158. Instead, the workers were summarily dismissed without prior investigation, without being informed of the accusations against them, and without being able to present a defence prior to their dismissals. Subsequently, the workers were apparently also denied the opportunity to present evidence in their defence to the Inquiry Commission, including witness testimony. [13]

29. In this regard, the Committee notes the summaries of sample cases examined by the Inquiry Commission set out in its 2019 Report. One example given is that of a rejection decision in an application concerning dismissal from public service under Decree-Law No. 672. The sample decision notes that article 2 of Law No. 7075 provides that "one of the Commission's duties is to carry out an assessment of and render a decision on the acts established directly through the decree-laws under the state of emergency, including dismissal or discharge from the public service, profession or organisation in which the persons concerned held office", while article 9 titled Examination and Decision reads as follows: "The Commission shall perform its examinations on the basis of the

[11] *Pişkin*, para. 68.

[12] *Pişkin*, para. 229.

[13] 2019 Report, 32.

documents in the file. The Commission may, following the examination, reject or accept the application." Finally, the Commission cites article 14 of the Communiqué on Working Procedures and Principles of the Inquiry Commission on the State of Emergency Measures, which provides: "The Commission shall carry out its examinations in respect of membership, affiliation, connection or contact with terrorist organisations, or structures/entities or groups established by the National Security Council as engaging in activities against the national security of the State. Any requests for giving an oral statement or having a witness heard shall be disregarded."

30. In its discussion of a sample case, the Inquiry Commission notes the applicant's statement as set out in the sample decision, namely his statement that: "He has no association whatsoever in terms of membership, affiliation, connection or contact with terrorist organisations, or structures/entities or groups established by the National Security Council as engaging in activities against the national security of the State. On this basis, he requests reinstatement to the public service." [14] Among its findings, the Inquiry Commission noted in its decision that the fact that the applicant was a member of a trade union and confederation that were shut down due to their affiliation, connection or contact with the FETÖ/PDY demonstrates that the applicant had contact with the organization in question. [15] The summary of the decision indicates that the Commission exercised the authority given to it under Decree-Law No. 667 to request and receive information from institutions, in this case from the applicant's employer. There is no indication, however, of the nature or content of any information provided by the applicant, or whether he was afforded an opportunity to provide information or evidence, including witnesses or witness statements, in his defence.

31. The Committee notes with concern that the dismissals of Aksiyon-Is members under the emergency decrees were carried out without affording the persons concerned the opportunity to defend themselves prior to their dismissals. While the Committee notes the gravity of the situation in Turkey following the attempted coup, it nevertheless notes that the dismissal of the individual workers affiliated to Aksiyon-Is was due to their affiliation with the trade union confederation.

32. The Committee recalls that Article 7 of the Convention provides that "the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity". It notes that Article 7 of the Convention establishes the principle that "the worker, before his employment is terminated, must have an opportunity to defend himself against the allegations made, which presupposes that the latter should be expressed and brought to his attention before the termination ... It is important that the allegations are expressed and communicated to the worker without ambiguity and that the worker is given a real opportunity to defend himself". [16] The Committee further observes that, when a person risks a sanction as serious as termination of employment, which may jeopardize the worker's career and sometimes the worker's future, it is essential that the worker be able to defend himself before his employment is terminated. [17] The Committee observes that this was of particular importance in the case

[14] 2019 Report, 34.

[15] 2019 Report, 38.

[16] See ILO, *Protection Against Unjustified Dismissal: General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No, 166), 1982*, ILC.III4B\82-3.E95, 1995, paras 146 and 150.

[17] 1995 *General Survey*, para. 145.

at hand as the sanction imposed on the dismissed workers included the grave consequence of blacklisting from all future employment, a matter which is addressed in the recommendation made by the tripartite Committee established to examine the elements of the representation relating to the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

33. As regards the allegations that the Aksiyon-Is members were dismissed due to their affiliations to that organization or to its affiliated organizations, the Committee recalls that under Article 5 of the Convention, union membership or participation in union activities does not constitute a valid reason for termination of employment. While duly noting the Government's position that the workers concerned were not dismissed due to their union membership, but rather due to their affiliation with a terrorist organization, the Committee refers to the considerations of the tripartite Committee in relation to Convention No. 87 and would highlight, as did that Committee, that the right to an effective remedy is one of the most significant guarantees to ensure the application of the rule of law. The Committee considers that, to be effective, a remedy should provide for a full examination of both facts and points of law and should prevent the alleged violation, where established, or its continuation. In line with this principle, and in light of the fact that membership in a dissolved organization was directly linked to engagement with a terrorist organization, despite the absence of review of the dissolution decision, the Committee considers that a judicial review of the dissolution of the trade union organizations concerned should have been conducted prior to or at the time of examining the legality of the dismissals. The Committee considers that the consequences of this absence of due process were particularly stark and extensive in that, in addition to being dismissed, the workers concerned were blacklisted as being or having ties to terrorists, thereby precluding them from securing alternative employment, their passports were cancelled (article 2(2) of Decree-Law No. 672 and articles 4(2) and 5 of Decree-Law No. 667), [18] they received no termination indemnities and were deprived of their entitlements under the health, unemployment and pension systems to which they were affiliated and had been contributing, in violation of Article 12 of Convention No. 158.

34. Moreover, observing that the sample cases provided in the 2019 Report appear not only to place the burden of proof on the worker, but also to restrict his or her means of defence, the Committee recalls that Article 9(2) of Convention No. 158 provides that:

> In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:
>
> (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
>
> (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

35. *In light of the foregoing, the Committee urges the Government to ensure that the dismissed workers are ensured a full and fair opportunity to argue their case and present information and evidence in their defence in challenging their dismissals and that the principle of due process is fully observed in each individual application, including on appeal. Noting that the*

[18] Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion No. 865/2016, CDL-REF(2016)061. For the text of the relevant Decrees, see Annex.

work of the Inquiry Commission is still under way, the Committee urges the Government to ensure full reconsideration on the merits of those cases in which the applications have been rejected without the applicants having had the opportunity to submit oral statements or present witnesses, and to ensure this right of defence for those dismissed workers whose applications have not yet been examined.

36. *Noting that the dismissals and categorization of the workers concerned as being affiliated with a terrorist organization has had dire impacts on their ability to secure alternative employment and livelihoods, and in view of the length of time elapsed since the dismissals in 2016, the Committee urges the Government to make all efforts to ensure a rapid, comprehensive and impartial review of the merits of each individual case, including through recourse to the courts, and in the event that the dismissals are found to be unjustified, to award compensatory damages and restitution of accrued benefits, including restoring the suspended teaching certificates and redressing any other damages incurred as a consequence of the dismissals.*

III. The Committee's recommendations

37. **The Committee recommends that the Governing Body:**

   (a) approve the present report;

   (b) request that the Government, in the context of the application of Convention No. 158, take into account the observations made in paragraphs 34 and 35 of the Committee's conclusions;

   (c) invite the Government to provide information in this respect for examination and further monitoring, as appropriate, by the Committee of Experts on the Application of Conventions and Recommendations; and

   (d) make this report publicly available and close the present representation procedure.

9 March 2021

(*signed*)

Government member: Niklas Bruun

Employer member: Renate Hornung-Draus

Worker member: Magnus Norddahl

▶ Annex

DECREE WITH FORCE OF LAW NO. 667 – 22 JULY 2016

DECREE ON MEASURES TO BE TAKEN UNDER STATE OF EMERGENCY

Measures concerning public officials

ARTICLE 4 –

…

(2) Those dismissed from service under paragraph one shall not anymore be employed in public service, and they shall not, directly or indirectly, be assigned; all kinds of membership in a board of trustees, a board, a commission, a board of management, a supervisory board or a liquidation board under the responsibility of those dismissed from service and their other tasks shall be deemed to have ended. Provisions of this paragraph shall apply to those who perform a task set out in this paragraph but do not have the status of public official.

…

Measures concerning investigations conducted

ARTICLE 5 – (1) Those against whom an administrative action is taken on the ground of their membership to, or connection or contact with structure/entities, organizations, groups or terrorist organizations, which are found established to pose a threat to the national security, and those against whom a criminal investigation or prosecution is conducted for the same reason shall immediately be reported to the passport department concerned by the institution or organization that takes action. Upon this information, the passports shall be cancelled by the passport departments concerned

DECREE WITH FORCE OF LAW NO. 672 – 1 SEPTEMBER 2016

SOME ARTICLES OF THE DECREE-LAW NO. 672 OF 1 SEPTEMBER 2016
ON THE MEASURES TAKEN UNDER THE STATE OF EMERGENCY

Measures concerning public officials

ARTICLE 2 –

….

(2) Those who have been dismissed from public service, from the General Security Directorate, the Gendarmerie General Command and the Coast Guard Command in accordance with the first paragraph shall be deprived of their ranks and their positions as public officials without any need for convictions, and they shall not be re-admitted to the organization in which they previously took office. They may not be re-employed and assigned directly or indirectly in any public service. Their membership of any board of trustees, boards, commissions, executive boards, supervisory boards, liquidation boards and other duties shall be automatically terminated. Their gun licenses, the documents concerning their seamanship and their pilot

licenses shall be cancelled, and they shall be evicted from the public residences or foundation houses in which they live within fifteen days. These persons may not become the founders, partners and employees of private security companies. The relevant ministries and institutions shall immediately notify the relevant passport unit. Upon this notification, the relevant passport units shall cancel their passports.