International Labour Organization

▶ GB.343/INS/13/3

Governing Body

343rd Session, Geneva, November 2021

Institutional Section **INS**

Date: 10 November 2021
Original: English

Report of the Director-General

Third supplementary report: Report of the Committee set up to examine the representation alleging non-observance by Sri Lanka of the Labour Inspection Convention, 1947 (No. 81) and the Protection of Wages Convention, 1949 (No. 95)

▶ Contents

▶ I. Introduction

1. By a communication received by the Office on 17 August 2018, the Flight Attendants' Union (FAU) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by the Government of Sri Lanka of the Labour Inspection Convention, 1947 (No. 81), and the Protection of Wages Convention, 1949 (No. 95). Conventions Nos 81 and 95 were ratified by Sri Lanka in 1956 and 1983, respectively, and are in force in the country.

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 Sri Lanka and brought it before the Officers of the Governing Body.

4. At its 334th Session (November 2018), the Governing Body decided that the representation was receivable and decided to set up a tripartite committee to examine it. The Committee is composed of Ms Farhat Ayesha (Government member, Pakistan), Mr Paul Mackay (Employer member, New Zealand), and Ms Amanda Brown (Worker member, United Kingdom of Great Britain and Northern Ireland).

5. Subsequent to the submission of the representation, the FAU sent several communications dated 14 September and 23 October 2018, 14 May and 16 September 2019, and 24 February 2020, respectively, in which it submitted supplementary information to the International Labour Office regarding the representation.

6. The Government of Sri Lanka submitted its observations concerning the representation on 5 March 2019, and responded to additional information submitted by the FAU by letter dated 10 October 2019, subsequently amended on 17 October 2019.

7. The Committee met virtually on 18 October and 2 November 2021 to examine the representation and adopt its report.

▶ II. Examination of the representation

A. The complainant's allegations

8. The complainant organization alleges the non-observance by the Government of Sri Lanka of Conventions Nos 81 and 95 and, in particular, Articles 3, 5, 17 and 18 of Convention No. 81, and Articles 1, 11 and 14 of Convention No. 95. In its communication of 23 October 2018, the complainant organization further alleges the non-observance of Articles 6, 13 and 16 of Convention No. 81.

1. Allegations under Convention No. 95

9. The allegations of the complainant organization under Convention No. 95 focus on whether the employer, SriLankan Airlines Limited (hereinafter the airline), has wrongfully calculated the applicable quantum of "earnings" liable for the purpose of employer contributions to the Employees' Provident Fund (EPF), [1] and has accordingly denied part of their earnings to the workers concerned as well as part of their retirement benefits.

10. In 2017, the FAU filed a formal inquiry to the Department of Labour claiming that certain "meal allowances" to cabin crew should be taken into account in the calculation of employer contributions to the EPF.

11. The FAU provides a copy of the decision of the Department of Labour issued on 16 December 2017, stating that the meal allowances in question should be included in the calculation of employer contributions to the retirement benefit fund of the workers. As is further detailed below regarding allegations under Convention No. 81, the FAU explains that the decision of 16 December 2017 was not enforced, thereby depriving the workers concerned of a part of their remuneration. According to the FAU, this would amount to a violation of Article 1 of Convention No. 95. The FAU also refers to earlier proceedings in 2002 and 2003 in which the Department of Labour had already ruled that certain meal allowances received by cabin crew members were to be included for EPF purposes. However, according to the FAU, these decisions were not implemented.

12. The FAU also indicates that, at the time the representation was submitted, the employer was undergoing business restructuring with possibilities of divestiture of ownership or even liquidation. The FAU considers that the delay in the treatment of its claims by the Department of Labour poses a serious threat to asserting the legitimate claims of workers as privileged debts, in violation of Article 11 of Convention No. 95.

13. Finally, the FAU alleges the non-observance of Article 14 of Convention No. 95, because the Department of Labour has failed to keep the workers effectively apprised of the statutory definition of "earnings" under the EPF Act and to follow-up with the employer to comply with this requirement in a meaningful manner.

[1] As set out in the representation of the complainant organization, the EPF is established by law under the Employees' Provident Fund Act No. 15 of 1958, as amended (EPF Act), to set up a retirement benefit scheme for workers, and requires both workers and employers to make mandatory minimum contributions to the Fund.

2. Allegations under Convention No. 81

14. Under Convention No. 81, the complainant organization's main allegation is that there is a systemic failure in the labour inspection regime of Sri Lanka and the absence of an effective, impartial, reliable and accountable labour inspection regime.

15. In support of this allegation, the FAU provides information on how the labour inspection system has operated in four proceedings at the national level, which, in its view, reflect experiences shared by many other workers and their organizations and show that:

(i) provisions relating to conditions of work and the protection of workers while engaged in their work are not practically enforceable by labour inspectors (Article 3 of Convention No. 81);

(ii) delays in the processes of the labour inspectorate are inordinate (Article 3 of Convention No. 81);

(iii) the Government does not have in place transparent and verifiable procedures to deal with inspection services and other government agencies (Article 5 of Convention No. 81);

(iv) persons who violate or neglect to observe legal provisions enforceable by labour inspectors are not made liable to prompt legal proceedings, because higher officials of the labour inspectorate aid the non-enforcement of labour laws (Articles 6 and 17 of Convention No. 81);

(v) higher officials of the labour inspection system obstruct the labour inspectorate in the performance of its legitimate duties, and are not subject to penal or corrective measures (Article 18 of Convention No. 81);

(vi) the impartiality and independence of the labour inspection regime is in crisis (Article 6 of Convention No. 81).

16. The complainant organization refers to the creation of an atmosphere that is not conducive to members of the labour inspectorate effectively discharging their duties. The FAU further alleges that the labour inspectorate's conduct in the above-mentioned proceedings constitute non-observance of Articles 13 and 16 of Convention No. 81 but does not elaborate on these allegations.

17. The four national proceedings are summarized below.

First national proceeding

18. The FAU refers to a formal complaint that it lodged with the Department of Labour in 2017, concerning actions by the employer, the airline. In substance, this complaint related to whether meal allowances for cabin crew were part of workers' "earnings", as defined under section 47 of the EPF Act:

(i) Following the complaint, the Department of Labour conducted an inquiry leading to the issuance of a decision from the then Assistant Commissioner of Labour, on 16 December 2017. This decision requested the employer to count the meal allowances of the relevant employees as part of their "earnings" when calculating EPF contributions.

(ii) Subsequently, the employer did not comply with the decision. According to the FAU, no transparent or meaningful steps were taken to implement the decision, even though the FAU sought an inquiry into the matter from different authorities.

(iii) In a meeting on 21 March 2018 between the FAU and the Department of Labour, the Commissioner General of Labour tried to review the content of the decision orally, but ultimately directed the decision to be implemented. The FAU asserts that such review is not provided for in law.

(iv) By letter dated 6 April 2018, the Department of Labour sought legal advice from the Attorney General regarding the matter, but allegedly omitted to include pertinent evidence when doing so.

(v) As of August 2018, the complainant organization was not informed that the decision had been revoked, but the decision was not implemented either.

Second national proceeding

19. In its communication dated 23 October 2018, the complainant organization refers to a formal complaint lodged on 30 August 2017. In substance, the complaint concerned alleged breaches by the employer of statutory provisions on casual leave entitlements, and provisions of a collective agreement on medical leave:

(i) An inquiry was conducted following the complaint, leading to the issuance of a "directive" on 26 June 2018. The FAU alleges that the issuance of such "directive" was subject to inordinate delay.

(ii) The employer refused to comply with the "directive", and the FAU notified the Department of Labour of this refusal on 17 September 2018.

(iii) By letter dated 16 September 2019, the FAU once again indicated to the Department of Labour that the employer had decided to reject the "directive" of 26 June 2018 and requested to be informed of the steps taken to ensure compliance with the document.

Third national proceeding

20. In its communication dated 23 October 2018, the FAU also refers to a complaint lodged on 8 September 2017, concerning alleged continuous breaches by the airline of the collective agreement in force. In substance, the alleged breaches related to the requirement that 95 per cent of flights be operated with a required complement of crew:

(i) Several rounds of discussions were held with the employer and before the Department of Labour, but the Department of Labour decided to close the inquiry on 23 May 2018.

(ii) After the FAU challenged the decision to close the inquiry, the Department of Labour reopened the case on 19 July 2018.

(iii) As at 24 February 2020, where the FAU requested an impartial inquiry into the matter, no decision was allegedly taken by national authorities despite a number of letters sent from the FAU.

Fourth national proceeding

21. In its communication dated 23 October 2018, the FAU also refers to a complaint it lodged on 15 February 2018 regarding the alleged violation of a collective agreement requirement relating to the alleged unlawful denial of crew promotions:

(i) The Department of Labour conducted a formal inquiry and issued a "directive" on 3 September 2018, recommending the promotion of two employees.

(ii) The employer rejected the "directive" and refused to comply.

(iii) By letter dated 16 October 2018, the FAU notified the Department of Labour that the employer had rejected the directive and refused to comply.

B. The Government's reply

22. In its communications dated 5 March and 10 October 2019, the Government denies the allegations of the FAU in both its initial complaint and supplementary communications.

1. Allegations under Convention No. 95

23. In its response, the Government considers that the "meal allowances" provided to cabin crew of the airline do not fall within the meaning of "earnings" under section 47 of the EPF Act, due to the nature of the payment.

24. The Government indicates that the employer had appealed the decision of 16 December 2017 regarding the inclusion of the "meal allowances" in question into the calculation of employer contributions to the EPF, and that the Commissioner General of Labour and the senior officials of the Department of Labour had carefully examined the appeal before finding that these "meal allowances" did not come under the definition of "earnings" under the EPF Act. The Government specifies that the considerations on which this conclusion was based, including that:

(i) the monthly "meal allowances" received by cabin crew members were variable and not fixed amounts, and were dependent on flight duties;

(ii) they were not reflected in the monthly pay slip of crew members; and

(iii) the FAU and the airline had mutually agreed that meal allowances in the collective agreement would not be considered for EPF and Employee Trust Fund contributions.

25. Accordingly, the Government considers that there were no violations of the principles under Convention No. 95.

2. Allegations under Convention No. 81

26. With regard to the first national proceeding related to EPF contributions, the Government provides additional information regarding the inquiry of the Department of Labour on the matter. In particular, the Government indicates that it is a long-standing practice of the Department of Labour that decisions of the Assistant Commissioner of Labour are not final and can be appealed to the higher authority of the Department of Labour by any party. The Government states that this practice has been accepted by the superior courts in the country. In this instance, the Employers Federation of Ceylon (EFC), on behalf of the airline, appealed the decision to the Commissioner of Labour (EPF) of the Department of Labour.

27. The Government indicates that, upon examination of the appeal, the Department of Labour found that the meal allowances given to flight attendants did not come under the definition of "earnings" under the EPF Act. After further legal advice from the Attorney General confirming this analysis, the Commissioner General of Labour ordered the Assistant Commissioner of Labour to revoke the previous decision, and this was communicated to the FAU by letter dated 7 September 2018.

28. In its communication of 10 October 2019, the Government stresses that, given that the inclusion of meal allowances in the calculation of EPF contributions was not considered in the collective agreement between the FAU and the airline, demanding their inclusion violated the principle of collective bargaining. Finally, the Government adds that, had the initial decision of the Assistant Commissioner of Labour been enforced, this would have worsened the situation of the airline, which had already been bailed out repeatedly by the Government.

29. In respect of the second national proceeding, the Government indicates that the document issued by the labour inspectorate was a recommendation from the Department of Labour and not a directive, contrary to the FAU's allegation. The Government further explains that the delays in the process were due to the existence of other complaints on the same matter, made during the same period to the Department of Labour, which required a careful review.

30. Furthermore, the Government stresses that there was no violation of any provision of the collective agreement between the parties. Accordingly, the Government considers that there were no legal provisions to enforce and no merit in referring the case to arbitration.

31. In respect of the third national proceeding, the Government indicates that, in the course of its inquiries, the Department of Labour had observed that the employer was already taking steps to hire new cabin crew employees as a measure to address staff shortages. The Government further notes that the Department of Labour had accommodated the request of the FAU to reopen the inquiry after its closure, and that opportunities had been given to submit observations. However, in the Department of Labour's view, there was no merit to proceed with the matter.

32. In respect of the fourth national proceeding, the Government indicates that the Department of Labour is taking the necessary steps to refer this matter for arbitration, because the employer had not complied with the issued recommendations of the Department of Labour.

▶ III. The Committee's conclusions

33. The Committee's conclusions are based on its examination of the allegations made by the complainant organization and of the replies sent by the Government.

Convention No. 95

34. The Committee observes that the allegations of the complainant organization under Convention No. 95 concern whether the "meal allowances" given to cabin crew should have been included in the definition of "earnings" applicable for the calculation of employer contribution to the EPF.

35. The Committee recalls Article 1 of Convention No. 95, which provides that:

> In this Convention, the term **wages** means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.

36. The Committee notes that the definition of "wages" under Convention No. 95 is broad enough to cover employer contributions to social security, such as health insurance and pension plans. [2] It is therefore within the scope of Convention No. 95 to examine whether employer contributions to the EPF have been duly paid, in line with the national system.

37. In the present proceedings, however, the Committee notes that the disagreement between the parties concerns whether there has been a mistake with regard to the quantum of "earnings" applicable to calculate employer contributions to the EPF. The complainant organization considers that the "meal allowances" for cabin crew fall within the meaning of "earnings" under section 47 of the EPF Act, and should therefore be taken into account in the calculation of employer contributions to the retirement benefit fund of the workers. In contrast, the Government considers that those "meal allowances" should not be taken into account in such calculations, because they do not count as "earnings" under section 47 of the EPF Act.

38. The Committee notes that Convention No. 95 does not contain any principles regarding the methods of calculation of employer contributions to pension funds at the national level. The issue of whether "meal allowances" can be considered as "earnings" for the purpose of social security contributions, and whether the particular allowance in question in the present case is a "meal allowance" under the EPF Act, is a question to be solved at the national level, and does not fall within the scope of the Convention. **In these circumstances, the Committee is not in a position to proceed with the examination of this matter. Considering the disagreement at the national level regarding this issue and its potential impact on the application of the Convention, the Committee invites the parties to engage in a dialogue at the national level, with all relevant stakeholders, with a view to addressing this issue.**

Convention No. 81

1. Preliminary remarks

39. Under Convention No. 81, the Committee observes that the complainant organization takes issue with the effectiveness, impartiality, reliability and accountability of the national labour inspection regime as a whole including the absence of a national labour inspection policy and law. To support this allegation, the FAU describes how the Department of Labour has operated in four specific proceedings at the national level. The Committee will thus examine the conformity of the actions of the Department of Labour in the respective proceedings with Articles 3, 5, 6, 17 and 18 of Convention No. 81, before examining the labour inspection system's overall compliance with Convention No. 81.

40. **In the absence of specific allegations under Articles 13 and 16 of Convention No. 81, the Committee will not examine the FAU's allegation of non-observance of those Articles.**

[2] In this respect, the Committee also takes into account the preparatory works of Convention No. 95 and the indications of the CEACR in the 2003 General Survey on the Protection of Wages. See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), International Labour Conference, 91st Session, Geneva, 2003, paras 37 (including footnote 1), 64 and 215.

2. First national proceeding

41. The Committee notes that the FAU asserts the existence of "a wilful failure" by the Department of Labour to enforce its decision of 16 December 2017, which requested the employer to include "meal allowances" as part of workers' "earnings" under the EPF Act. Specifically, the FAU takes issue with: delays in the proceedings; different actions taken by higher officials in the Department of Labour, including attempts to review the decision in ways the FAU asserts to be unlawful; and the absence of transparent and verifiable procedures between the inspection service and other government agencies, such as the Attorney General.

42. The Committee notes that, in response, the Government indicates that there was an appeal of the decision by the EFC, on behalf of the employer, according to a long-standing practice accepted by the superior courts in the country. Subsequent to this appeal, the senior officials of the Department of Labour and the Commissioner General of Labour reviewed the decision at issue and revoked it.

43. The Committee recalls that Article 3(1)(a) of Convention No. 81 provides that:

> 1. The functions of the system of labour inspection shall be:
> (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work … in so far as such provisions are enforceable by labour inspectors.
> […]

44. Furthermore, the Committee wishes to underline that enforcement duties of labour inspectors form part of their primary duties under Article 3(1) of the Convention. Accordingly, the non-implementation without consequences of decisions issued by labour inspectors could raise issues of incompatibility with the Convention, as labour inspection would be ineffective in securing the enforcement of the relevant legal provisions.

45. The Committee notes, however, that the non-enforcement of the decision at issue was linked to the Department of Labour's decision to review the substance of its decision and to revoke it. In this respect, the Committee notes that the parties disagree as to whether the decision could be subject to review in the national context. **In these circumstances, taking into account the information available and, in particular, that Convention No. 81 does not contain provisions dealing with the ability of the labour inspectorate to review and revoke issued decisions, where it finds that previously issued decisions are incorrect, the Committee will not proceed with any further examination of this allegation.**

46. Regarding the FAU allegations under Article 5(a) of Convention No. 81, the FAU asserts that the absence of transparent and verifiable procedures for co-operation between the inspection service and other government agencies violates Article 5(a) of the Convention. Specifically, the FAU takes issue with the Department of Labour seeking legal advice from the Attorney General regarding the decision of 16 December 2017, while allegedly omitting pertinent evidence.

47. Article 5(a) of Convention No. 81 provides:

> The competent authority shall make appropriate arrangements to promote:
> (a) effective co-operation between the inspection services and other Government services and public or private institutions engaged in similar activities;
> […]

48. The Committee notes that, while Article 5(a) requires co-operation arrangements to be "effective", it does not define specific criteria according to which these arrangements should be established. **Consequently, in the absence of more specific allegations under this Article, as well as the general denial by the Government of all allegations, the Committee will not proceed with the examination of this allegation.**

49. With regard to Articles 17 and 18 of Convention No. 81, the FAU contends that persons who violate or neglect to observe legal provisions enforceable by labour inspectors are not made liable to prompt legal proceedings. The FAU also argues that persons responsible for obstructions of labour inspectors do not face penal or corrective measures.

50. The Committee recalls that Article 17(1) of Convention No. 81 requires that: "Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning".

51. Article 18 of Convention No. 81 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.

52. The Committee notes that, in the current proceedings, whether a violation of the relevant legal provisions has occurred is itself an issue under challenge in the national context. The substance of the decision of 16 December 2017, which concerns the calculation of EPF contributions at the national level, also falls outside the scope of the Convention. **Taking into account its analysis above on Article 3, the Committee therefore considers that the Department of Labour has not violated Articles 17 and 18 of the Convention in the current circumstances.**

53. Finally, the Committee notes that the FAU challenges the impartiality of the labour inspectorate. The FAU contends in this respect that the Department of Labour's failure to enforce the decision of 16 December 2017 is "wilful", and that "higher officials of the labour inspectorate aid and abet the non-enforcement of labour laws". In addition, the FAU argues that the actions of the Department of Labour constitute an "obstruction" or the "undermining" of the labour inspectorate in the performance of their duties.

54. The Committee recalls that, under Article 6 of the Convention, the "inspection staff shall be composed of public officials whose status and conditions of service are such that they are … independent of changes of government and of improper external influences".

55. However, the Committee observes that, while the FAU asserts that the impartiality of the Department of Labour is in crisis, it has not submitted information demonstrating that the actions of the officials of the Department of Labour were subject to improper external influences in the current context. The Government, for its part, denies all of the FAU's allegations. **In light of the information available, the Committee considers that it cannot draw conclusions on the incompatibility of the Department of Labour's actions with Article 6 of the Convention. The Committee only recalls the importance of the principles enshrined in the Convention, as concerns the primary duties of the labour inspection system and the impartiality necessary to the performance of labour inspection duties.**

3. Second national proceeding

56. In its communication of 23 October 2018, the FAU refers to a complaint it lodged regarding alleged breaches of statutory provisions on casual leave entitlements, and provisions of a collective agreement on medical leave. The complaint led to the issuance of a document on 26 June 2018 by the Assistant Commissioner of Labour of the Colombo South District Labour Office. The FAU alleges that the delays in the processing by the Department of Labour of the complaint were inordinate and that national statutory provisions are unenforceable as a result.

57. In contrast, the Government responds that the complaint did not clearly identify violations of the collective agreements, and that the document issued by the Department of Labour were only recommendations for the employer. The Government further indicates that the delays were linked to complaints made to the Department of Labour on the same matter during the same period, which required a careful study as to whether the provisions of the collective agreement had been violated. According to the Government, the only solution is to refer the dispute for arbitration, but there is no clear merits to refer it for arbitration.

58. The Committee recalls that the functions of labour inspectors under Article 3(1) of Convention No. 81, as set out above, include securing the enforcement of the relevant "legal provisions" enforceable by labour inspectors.

59. Article 27 of Convention No. 81 specifies in this regard:

> In this Convention the term **legal provisions** includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

60. Taking into consideration the limited and sometimes contradictory information submitted, and that the parties appear to have a different understanding as to the legal nature, in the national context, of the document issued by the Department of Labour on 26 June 2018, the Committee cannot assess whether a violation of the Convention has occurred. The Committee invites the parties to initiate a dialogue on this issue, with a view to finding a solution at the national level.

4. Third national proceeding

61. In its communication of 23 October 2018, the FAU also referred to the alleged non-investigation of continuous breaches by the airline of a collective agreement, with regard to the requirement that 95 per cent of flights be operated with a required complement of crew. The FAU alleges that the processing by the Department of Labour of the complaint shows the inefficiency of the system and causes the relevant provisions to be unenforceable.

62. In contrast, the Government indicates that the Department of Labour, after closing the inquiry once, had already accommodated the request of the FAU to reopen it, and that opportunities had been given to parties to submit observations.

63. In this regard, while recalling the important function that the labour inspectorate has in ensuring the effective application of the relevant legal provisions, the Committee trusts that the investigation has been carried out and hopes that appropriate action has been taken, in accordance with the provisions of the Convention.

5. Fourth national proceeding

64. Finally, the FAU's communication of 23 October 2018 refers to the alleged violation of a collective agreement's requirement relating to the unlawful denial of crew promotions. The FAU refers to the issuance by the Department of Labour of a document on 3 September 2018 recommending the promotion of two employees, and with which the employer refuses to comply.

65. The Committee observes that, in its response, the Government indicates that the Department of Labour is taking the necessary steps to refer this matter for arbitration, because the employer had not complied with the issued recommendations. **In the current circumstances, the Committee trusts that the Government will ensure the adequate, impartial and speedy functioning of appropriate proceedings to bring a satisfactory resolution to the matter.**

6. Overall implementation of Convention No. 81

66. The complainant organization alleges that the matters examined above illustrate a systemic failure in the labour inspection regime of Sri Lanka and the absence of an effective, impartial, reliable and accountable labour inspection regime, which results in a "situation of lawlessness and impunity". It also takes issue with the absence of a national labour inspection policy and a corresponding labour inspection law to give effect to the principles contained in such policy. [3]

67. Having examined the information submitted to it, the Committee observes that:

(i) in several instances in the current representation, the Government and the complainant organization, seem to have a different understanding of documents issued by the labour inspectorate and their legal effect; and

(ii) the content of decisions are reviewed over time after having been issued, [4] with different conclusions being issued on similar questions in different proceedings. [5]

[3] The complainant organization also refers to a failure to give effect to recommendations of the ILO's Technical Memorandum on the Sri Lanka labour administration and inspection needs assessment (2012).

[4] For example, in the first national proceeding, the validity of the decision of 16 December 2017 appears to have been challenged and confirmed by the Department of Labour itself at different points in time between the issuance of the decision and the submission of the representation in August 2018. According to Annex A10 to the representation of the FAU (transcript of the meeting of 21 March 2018 between the FAU and the Commissioner General of Labour), the Commissioner General of Labour requested verbally, at the end of the meeting, for the implementation of the decision. Nevertheless, the response of the Government confirms that the review of the decision continued after that date.

[5] For instance, the inquiry report of the labour officer who examined the FAU's complaint in the first national proceeding (Annex A2(a) of the representation) indicates that a decision on the issue of "meal allowances" and EPF contributions had already been issued by the Commissioner of Labour of the EPF Division as far back as in 2002, requiring that "meal allowances" be included for the purposes of the EPF, and that the decision was not implemented by the employer. A letter dated 18 July 2003 from the Commissioner of Labour to the FAU (Annex A3 to the representation) also states that "meal allowances" paid to cabin crew would "attract EPF contributions".

68. In addition, the Committee considers that the information provided does indicate that certain delays exist in processing complaints from workers. [6]

69. The Committee considers that such occurrences have the potential to negatively impact the effectiveness of the labour inspectorate in the discharge of its functions under Article 3 of the Convention, if repeated over time, as they may undermine trust in the authority of the Department of Labour and the credibility of its decisions. Such occurrences may also lead to uncertainty and make it difficult for stakeholders to know their obligations and rights and have them effectively enforced.

70. **Accordingly, the Committee requests the Government to examine ways, in full consultation with the social partners, in which the system for labour inspection can be strengthened, in particular in relation to Article 3(1)(a) of Convention No. 81 (securing the enforcement of relevant legal provisions enforceable by labour inspectors). In this regard, the Committee recalls that in this process, the Government can avail itself of the ILO's technical assistance.**

71. Furthermore, regarding the allegation related to the absence of a labour inspection policy, the Committee recalls that while such a policy may be a useful tool for the implementation of the Convention, the Convention does not refer to, or require, such a policy.

72. Finally, while the Committee finds that it could not proceed with the particulars of each allegation raised in the national proceedings referred to, it notes, on the basis of the information submitted, that the underlying issues in the relationship between the labour inspectorate and the workforce are worthy of further consideration by the Government. **The Committee invites the Government to explore ways and means to improve the collaboration between officials of the labour inspectorate and employers and workers and their organizations, with a view to supplying technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions.**

[6] For instance:

(i) In the first national proceeding, there was a lapse of approximately six months between the submission of the complaint on 20 June 2017 and the issuance of the statutory order of 16 December 2017;

(ii) In the first national proceeding, the FAU asserts that, at the time it submitted the representation in August 2018, it had not received any communication from the Department of Labour intimating that the statutory order of 16 December 2017 had been revoked. The Government confirms in its response that the decision to revoke the statutory order was communicated to the FAU on 7 September 2018, after the submission of the representation;

(iii) In the second national proceeding, there was a lapse of approximately ten months between the lodging of the complaint on 30 August 2017 and the issuance by the Department of Labour of recommendations on 26 June 2018. The Government confirms that its recommendations took a considerable period of time due to the examination of complaints with connected matters;

(iv) In the third national proceeding, there is no information on the record that the decision to close the second inquiry was communicated to the parties; and

(v) In the fourth national proceeding, there was a lapse of approximately five and a half months between the lodging of the complaint on 15 February 2018 and the issuance by the Department of Labour of recommendations on 3 September 2018.

▶ IV. The Committee's recommendations

73. In the light of the conclusions set out in paragraphs 38, 40, 45, 48, 52, 55, 60, 63, 65, 70 and 72 above with regard to the matters raised in the representation, the Committee recommends that the Governing Body:

(a) approve this report;

(b) request the Government to examine ways, in full consultation with the social partners, in which the system for labour inspection can be strengthened, in particular in relation to Article 3(1)(a) of Convention No. 81;

(c) invite the Government to consider engaging in consultations with the social partners at the national level to find effective solutions to the matters raised in the Committee's conclusions set out above;

(d) invite the Government to send information on the results of these processes in its next report to the Committee of Experts on the Application of Conventions and Recommendations;

(e) invite the Government to explore ways and means to improve the collaboration between officials of the labour inspectorate and employers and workers and their organizations, with a view to supplying technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and

(f) make this report publicly available and close the procedure initiated by the representation.

2 November 2021

(*signed*) Farhat Ayesha
Government member

Paul Mackay
Employer member

Amanda Brown
Worker member