National Council for Social Dialogue and its mandate and mode of operation. The Committee also notes the Government's indication that, in order to facilitate the nomination of the members of the Council, the Ministry of Labour is taking steps towards adopting a decree establishing criteria for trade union representativeness at the national level. These criteria include: (i) the number of union members up to the end of 2017; (ii) the date of the last electoral congress; (iii) the sectoral structures and their nature; and (iv) the local and regional structures. The Government adds that it will inform the Office of the adoption of this decree, which will make it possible to designate the most representative organization at the national level which will be represented within the National Council for Social Dialogue. While noting this tangible progress towards determining criteria for trade union representativeness which it has been requesting the Government to do for a number of years, the Committee nevertheless emphasizes that its comments also emphasized the need for the Government to engage in inclusive tripartite consultations in this regard, namely in a context which encompasses all the organizations concerned by this issue. The Committee also notes that, under section 8 of Act No. 2017-54, the general assembly of the Council is composed of an equal number of representatives from the Government, the most representative workers' and employers' organizations in both the agricultural and non-agricultural sectors. The Committee understands this to mean that social partnerships will involve most representative trade unions and organizations of employers in the country, according to the results of elections to be held on the basis of the criteria for representativeness adopted in the government decree. ***The Committee requests the Government to provide details of any new developments in this regard, to indicate the tripartite consultations held regarding the criteria for representativeness, to send a copy of the government decree when it has been adopted, and to provide information, if applicable, on the composition of the National Council for Social Dialogue.***

Turkey

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) *(ratification: 1993)*

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017 and 1 September 2018 as well as the observations of the Confederation of Progressive Trade Unions of Turkey (DİSK) and the Confederation of Public Employees Trade Unions (KESK) attached to them and the Government's reply thereto. The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) transmitted by the International Organisation of Employers (IOE) received on 1 September 2018 as well as the observations of Education International (EI) and the Education and Science Workers' Union of Turkey (EGİTİM SEN) received on 1 October 2018 and the Government's reply thereto. Further, the Committee notes the observations of the TİSK and the Confederation of Turkish Trade Unions (TÜRK-İŞ) communicated with the Government's report. The observations of TÜRK-İŞ allege that workers employed temporarily via private employment agencies cannot enjoy trade union rights as they often change industry and unionization in Turkey is industry-based. They also refer to allegations of pressure exercised on workers, particularly in public sector workplaces, to join unions designated by the employer. ***The Committee requests the Government to provide its comments in this respect.***

Civil liberties. The Committee recalls that for a number of years it has been commenting upon the situation of civil liberties in Turkey. It notes the observations of the ITUC, KESK and DİSK, alleging the prohibition of many demonstrations and press statements of the DİSK and KESK and their affiliated unions, and numerous arrests of union members and officials, as well as withdrawal of passports of the dismissed KESK executives. The Committee notes the Government's general reply to the alleged oppression of certain unions and their members, indicating that the examples cited mostly concerned the situations where the requirements of the state of emergency were ignored or disrespected persistently; or where unlawful strike action was called for; or open-air activities were conducted in violation of Law No. 2911; or where disciplinary procedures were applied to civil servants involved in politics in violation of their status. The Government finally indicates domestic administrative or judicial ways of remedy are available against all acts of the administration. ***The Committee requests the Government once again to provide information on the measures taken to ensure a climate free from violence, pressure or threats of any kind so that workers and employers can fully and freely exercise their rights under the Convention. In this regard, the Committee requests the Government to indicate whether the aforementioned administrative or judicial remedial channels have been invoked by union members or civil servants, and with what results.***

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. In its previous comments, the Committee had noted that section 15 of Act No. 4688, as amended in 2012, excludes senior public employees, magistrates and prison guards from the right to organize. The Committee notes the Government's indication in reply to the 2015 KESK observations that in a judgment dated 30 September 2015, the Constitutional Court repealed the restriction laid out in section 15(a) of Act No. 4688, thus allowing the personnel of the Administrative Organization of Turkish Grand National Assembly to unionize. The Government further adds that the restrictions under section 15 of the Act are limited to those public services where disruption cannot be compensated such as security, justice and high-level civil servants. The Committee notes the observations of the KESK which, while welcoming the Constitutional Court decisions of April 2013 and January 2014 that abolished certain restrictions on the right of public servants to organize, denounce the remaining restrictions that allegedly affect one sixth of public servants. ***Recalling that***

the only exceptions from the application of the Convention pertain to the armed forces and the police, the Committee once again requests the Government to take the necessary measures to review section 15 of Act No. 4688 as amended with a view to ensuring to all public servants the right to form and join organizations of their own choosing.

Article 3. Right of workers' organizations to organize their activities and formulate their programmes. The Committee recalls that in its previous comments it had noted that section 63(1) of Act No. 6356 provides that a lawful strike or lockout that has been called or commenced may be suspended by the Council of Ministers for 60 days with a decree if it is prejudicial to public health or national security and that if an agreement is not reached during the suspension period, the dispute will be submitted to compulsory arbitration. For a number of years, the Committee, along with the Committee on Freedom of Association (CFA), has been requesting the Government to ensure that section 63 of Act No. 6356 is not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. The Committee notes that in a decision dated 22 October 2014, the Constitutional Court ruled that the prohibition of strikes and lockouts in banking services and municipal transport services under section 62(1) is unconstitutional. However, the Committee also notes that in its last examination of Case No. 3021, the CFA has noted that pursuant to a recent Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. On this occasion, the CFA had invited the Government to send detailed information on the application of the Decree No. 678 to the Committee of Experts, having referred the legislative aspects of the matter to this Committee (see 382nd CFA Report, June 2017, paragraph 144).The Committee notes in this regard the DİSK 2018 observations, indicating that KHK No. 678 allows metropolitan municipalities to postpone strikes in urban public transportation and banking services and alleging the suspension, under section 63, of five strikes in 2017, during the state of emergency. The Committee notes the Government's indication that these strikes which were to take place in energy, glass, steel, pharmaceutical and banking industries, covering 24,000 workers were considered to be a threat to national security, public health and economic and financial stability. The Government further indicates that the disputes in the steel and banking industries were finally submitted to compulsory arbitration and in all the other cases an agreement was reached between the parties. The Government finally indicates that apart from these five cases there was no limitation to the right to strike during the state of emergency and that workers in 20 working places went on strike. The Committee notes with ***concern*** that shortly after the ruling of the Constitutional Court lifted the ban on strikes in urban transportation and banking sectors, a decree gave the power to metropolitan municipalities to ban strikes in those sectors. The Committee further notes with ***concern*** that in 2017 five strikes were suspended including in the glass sector on the grounds of threat to national security, while in 2015 the Turkish Constitutional Court had found a strike suspension in the same sector unconstitutional. It recalls that the right to strike may be restricted or banned only with regard to public servants exercising authority in the name of the State, in essential services in the strict sense of the term, and in situations of acute national or local crisis, for a limited period of time and to the extent necessary to meet the requirements of the situation. ***Recalling the Constitutional Court ruling that strike suspensions in these sectors were unconstitutional, the Committee requests the Government to take into consideration the above principles in the application of section 63 of Act No. 6356 and KHK No. 678. It further requests the Government to provide a copy of KHK No. 678.***

The Committee notes the ITUC allegation that Decree No. 5 adopted in July 2018 provides that an institution directly accountable to the Office of the President – the State Supervisory Council (DDK) – has been vested with the authority to investigate and audit trade unions, professional associations, foundations and associations at any given time. According to the ITUC, all documents and activities of trade unions may come under investigation without a court order and the DDK has discretion to remove or change the leadership of trade unions. The Committee notes the Government's reply on this matter, indicating that the DDK carries out its examinations with the purpose of ensuring the lawfulness, regular and efficient functioning and improvement of the administration and there is no intention to interfere with the internal functioning of the unions. The Government further adds that the power to dismiss or suspend union administrators is an arrangement intended only for public servants. ***Recalling that any law that gives the authorities extended powers of control of internal functioning of unions beyond the obligation to submit annual financial reports would be incompatible with the Convention, the Committee requests the Government to transmit a copy of Decree No. 5 in order to make a thorough examination of its conformity with the Convention in accordance with the above principle. The Committee also requests the Government to provide specific information on any investigations or audits undertaken pursuant to Decree No. 5 and their results, including any dismissal or suspension of trade union leaders.***

Article 4. Dissolution of trade unions. The Committee notes the observations of the DİSK, alleging that pursuant to the KHK No. 667, 19 trade unions affiliated with Cihan-Sen and Aksiyon-İş with memberships of around 22,000 and 30,000 were closed down for being in connection with the Fethullahist Terrorist Organization/Parallel State Structure (FETO/PSS). The DİSK further adds that a provision in the KHK provides that "trade unions, federations and confederations that are not specified in the annexed list, but found as in connection, communication or adherence to formations threatening national security or to terrorist organizations are banned upon the suggestion of the commission and approval of the minister concerned". The Committee wishes to recall 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. The Committee notes that after the attempted coup of 15 July 2016, Turkey was in a state of acute national crisis, and that in the meantime, a Commission of Inquiry has been

established that receives applications against the dissolution of trade unions by decree during the state of emergency and whose decisions are appealable before administrative courts of Ankara. The Committee has examined the role of this Commission in its comment on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in Turkey. ***The Committee firmly hopes that the Commission of Inquiry will be accessible to all the organizations that desire its review and that the Commission, and the administrative courts that review its decisions on appeal, will carefully examine the grounds for the dissolution of trade unions paying due consideration to the principles of freedom of association. It requests the Government to continue to provide information on the number of applications submitted by the dissolved organizations, and the outcome of their examination in the Commission. The Committee further requests the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning dissolved trade unions.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 108th Session and to reply in full to the present comments in 2019.]

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)

The Committee notes the observations of the International Trade Union Confederation (ITUC) and those of the Confederation of Progressive Trade Unions of Turkey (DİSK) and the Confederation of Public Employees Trade Unions (KESK) attached to it, received on 1 September 2018 and the Government's reply thereto. The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) transmitted by the International Organization of Employers (IOE), received on 1 September 2018, as well as the observations of Education International (EI) and the Education and Science Workers Union of Turkey (EGİTİM SEN) received on 1 October 2018 and the Government's reply thereto. Finally, the Committee notes the observations of the TİSK that refer to questions examined by the Committee and those of the Confederation of Turkish Trade Unions (TÜRK-İŞ) communicated with the Government's report. The observations of TÜRK- İŞ refer to allegations of partiality in the practice of the Supreme Arbitration Council and inadequate protection of union members against anti-union discrimination pending the authorization of an organization as collective bargaining agent. ***The Committee requests the Government to provide its comments in this respect.***

Scope of the Convention. In its previous comment, the Committee had noted that the prison staff like all other public servants are covered by the collective agreements concluded in the public service, even though under section 15 of the Act on Public Servants' Trade Unions and Collective Agreement (Act No. 4688) they do not enjoy the right to organize. The Committee had requested the Government to take the necessary measures, including legislative review, with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them. It notes with ***regret*** the Government's indication that there has been no new development in this regard and has therefore to reiterate its previous request. ***Recalling that all public servants not engaged in the administration of the State must enjoy the rights afforded by the Convention, the Committee again requests the Government to take the necessary measures including legislative review of section 15 of Act No. 4688 with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect them.***

Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination. Following up on the recommendations of the June 2013 Committee on the Application of Standards of the International Labour Conference, the Committee had requested the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors. The Committee notes the Government's indication that preparations for the establishment of the data collecting system are underway within the framework of the "Improving Social Dialogue in Working Life" project, currently in progress with the technical support of the Office. The Committee further notes the texts of the Council of State ruling and the Regulation on the Assignment of the Administrators of Educational Institutions submitted by the Government upon its request. ***The Committee requests the Government to continue providing information on the progress made in the establishment of the system for collecting data on anti-union discrimination in private and public sectors.***

Articles 1, 2 and 3. Massive dismissals in the public sector under the state of emergency decrees. In its previous comment, the Committee had urged the Government to ensure that the ad hoc Commission established to review the dismissals in the public sector under the state of emergency (hereafter, the Inquiry Commission) is accessible to all the dismissed trade union members who desire its review, and that it is endowed with the adequate capacity, resources and time to conduct the review process promptly, impartially and expeditiously. The Committee further requested the Government to ensure that the dismissed unionists do not bear alone the burden of proving that the dismissals were of an anti-union nature, by requiring the employers or the relevant authorities to prove that the decision to dismiss them was based on other grounds. In case it was established that the dismissal of trade unionists has been based on anti-union motives, the Committee expressed the firm expectation that they be reinstated in their posts with payment of unpaid wages and maintenance of acquired rights. The Committee notes the Government's indication that all the dismissed public servants, with the exception of the members of the judiciary who have to follow a different track, have the right to apply to the Inquiry Commission for a review of their dismissals. With regard to the capacity and resources of the Commission, the

Committee notes the Government's indication that the Inquiry Commission's period of office can be extended until its review of all applications submitted is completed. The Government further indicates that in addition to its 7 members, the Commission employs a total of 250 personnel, 80 of whom are judges, experts and inspectors employed as rapporteurs. With regard to the process of application and review, the Government indicates that a data processing infrastructure for the application process has been established where all information concerning natural and legal applicants is recorded and electronic applications are received 24 hours a day. A website has also been created where applicants can follow-up on their application. In case of acceptance of application, the decision is notified to the public institution where the applicant was last employed for their reinstatement. The applicant's social and financial dues shall be paid for the period of dismissal until the date they are reinstated. In case of a negative decision, the applicant can have recourse to the competent administrative courts in Ankara. With regard to the burden of proof, the Government indicates that the Commission demands from the relevant public institutions to submit the documents and information showing the applicant's membership, affiliation or connection to a terrorist organization. If the relevant public institutions provide no such document and information and no investigation or prosecution exists about the applicant, then the Commission accepts the application for reinstatement. The Committee also notes the following statistics provided by the Government: as of 9 November 2018, the Commission had received 125,000 applications. The Commission started its decision-making process on 22 December 2017 and as of 9 November 2018 it had delivered 42,000 decisions, including 3,000 acceptances and 39,000 rejections. The Government finally indicates that the Commission makes individualized and reasoned decisions on approximately 1,200 applications per week through a rapid and at the same time thorough examination. The Committee notes that pursuant to the statistics communicated by the Government, only 7 per cent of the reinstatement applications received have been accepted. However, the Committee has no information as to the rate of acceptance/rejection of the applications submitted by dismissed union members or officials. In this regard the Committee notes the observation of EGİTİM SEN alleging that while the law decrees of the state of emergency (Kanun Hükmünde Kararname, hereafter KHK) dismissed 1,628 EGİTİM SEN members, as of end of September 2018 only 12 applications resulted in the countenance of the dismissed applicants.

In its previous comment, the Committee had also requested the Government to ensure that in the context of the prolongation of the state of emergency no workers will be dismissed by reason of union membership or because of participation in union activities. The Committee notes in this regard the Government's indication that the state of emergency ended on 18 July 2018, two years after the attempted coup. The Committee also notes the following observations of the ITUC, DİSK, KESK and EGİTİM SEN, updating and supplementing the allegations of anti-union dismissals and suspensions under the state of emergency: (i) as of May 2018, a total of 4,312 KESK members had been dismissed from office, including 138 dismissed pursuant to KHK No. 695 dated 24 December 2017, 4 dismissed pursuant to the KHK No. 697 dated 12 January 2018, and 102 dismissed pursuant to the decision of the Higher Disciplinary Board. The number of reinstated KESK members in the same period amounted to 94; (ii) a group of 18 members of the Executive Committee of KESK and at least 330 of its representatives serving at local branches, disciplinary boards and audits were among the dismissed; (iii) massive suspension occurred in some cities through which 11,329 KESK members were suspended from their offices since 20 July 2016 and, in late 2017, there remained about 240 suspended KESK members; (iv) nearly 400 "Academics for Peace" the majority of whom were members of EGİTİM SEN and SES (both KESK affiliates) and who had signed a declaration calling for an end to fighting in East and Southeast Anatolia were expelled from university under the state of emergency; and (v) only 50 of the 1,959 DİSK Genel-İş members dismissed through KHKs returned to their jobs and the contracts of 28 members remained suspended. With regard to the grounds of the dismissals, the Committee notes the Government's emphasis that the dismissals took place on the grounds of membership, affiliation or connection to the terrorist organizations and in no way were they related to or based on legitimate trade union membership, status or activity of the persons concerned. The Committee notes however the observations of KESK and EGİTİM SEN, alleging that the Government uses the terms "terrorist activity" or "terrorism propaganda" to label all political opposition groups and their activities. The Committee further notes the KESK's allegation that as a result of application of very broad and vague criteria, allowing for the dismissal of public servants who were "considered" to have connections with illegal groups and entities, as of May 2018, 4,218 KESK members who had been subjected to threats and pressure from the Gulenist Structure were dismissed from office. The Committee notes in this regard the Government's indication that no one has immunity from prosecution for illegal activities and all trade unions and their members must respect the law of the land.

The Committee further notes the observation of KESK and EGİTİM SEN alleging that the political power targeted and punished certain trade unions by means of state of emergency and this situation continues despite the end of state of emergency as the public employer supports the pro-government unions while exerting pressure on oppositional trade unions. The Committee recalls in this regard that in its previous comment, it had noted the allegation that EGİTİM SEN and the DİSK members were targeted for suspension and dismissal because of their membership in unions affiliated to their confederations (KESK and DİSK) and the EGİTİM SEN allegation that administrators of many public institutions reported false charges against their members and officials which would lead to their dismissal and suspension, so as to weaken their union to the advantage of the so-called "partisan" unions. In this regard the Committee had urged the Government to take the necessary measures to prevent and remedy any eventual abuse of the state of emergency to interfere in trade union activities and functioning and to provide information on the measures taken. The Committee notes with ***regret*** that the Government has not responded to this request and the relevant observations of the trade unions.

The Committee notes that while the Government indicates that the dismissals were merely grounded on illegal activity of the targeted employees, the observations of the workers organizations indicate that the criteria of "connection to terrorist organizations" was too broadly applied and used to target members of unions who shared political affinities with the opposition, with a view to strengthening the position of the pro-government unions in the public sector. While the Committee is not in a position to verify these allegations, it considers that the protection against anti-union discrimination afforded to workers by the Convention remains valid in all political circumstances. Union members must be protected against dismissals merely based on the political affinities of their organizations, in particular during a state of emergency, as long as they act in conformity with existing laws. Furthermore, it considers that in the public sector, dismissals that would aim at weakening unions close to the political opposition to the benefit of pro-government unions would amount to acts of interference aimed at promoting workers' organizations under the domination of the employer and would violate both *Articles 1* and *2* of the Convention. The Committee firmly hopes that the Inquiry Commission that has the necessary means to examine the relevant facts, and the Ankara administrative courts that are competent to examine appeals against the decisions of the Commission will pay due consideration to these points. ***Taking due note of the information submitted to it on the dismissals of trade union members and officials under the state of emergency and the functioning of the Inquiry Commission, the Committee expresses its deep concern at the situation as it has developed given the high number of suspensions and dismissals that still affect trade union officials and members. The Committee firmly hopes that the Commission and the Ankara Administrative Courts that review its decisions will carefully examine the grounds for the dismissal of trade union members and officials in the public sector and that they will reinstate any trade unionist applicant dismissed for anti-union or interference motives. It requests the Government to continue providing information on the functioning of the Commission, and in particular, to indicate the number of applications received from trade union members and officials, and the outcome of their examination in the Commission. The Committee further requests the Government to provide information on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials.***

Article 1. Anti-union discrimination in the course of employment. The Committee notes the observations of KESK and EGİTİM SEN, alleging that hundreds of their members and affiliates, mostly in the education sector, were transferred against their will from their workplaces in 2016 (at least 122 transfers, mainly for participation in trade union activities and events) and in 2017 (1,267 transfers, 1,190 of whom from the education sector). The unions' observations refer in detail to 116 cases where union members and officials were subjected to disciplinary investigation and forced transfers, sometimes combined with demotions, as a result of participation in various union activities, including press conferences, protests or strikes organized in reaction to the Ankara bombing of 10 October 2015 or in relation to comments published in the social media. The Committee notes the KESK's indication that after the unions took some initiatives and had dialogue with authorities to solve the issue some of the transferred union members were sent to workplaces close to their original workplaces and very few of them who had dependents with special needs were sent back to their original workplaces. However, according to KESK, 14 public officers' relocation was not revoked despite their having dependents with special needs. The Committee further notes the observations of KESK alleging that the so-called social equilibrium compensation agreements concluded pursuant to section 32 of Act No. 4688 contain provisions that discriminate against members of minority unions as they impose higher fees on them and make the distribution of benefits dependent on the clear disciplinary record of the employee. The KESK refers in this regard to agreements concluded in Gaziantep and Kocaeli, where Bem-Bir-Sen, an affiliate of the allegedly pro-government MEMUR SEN confederation represents the majority, and TÜM BEL SEN, a KESK affiliate, is the minority union. The KESK further indicates that a number of affected employees have challenged the discriminatory provisions in court and the cases are still pending. The Committee notes the Government's general reply to the alleged oppression of certain unions and their members, indicating that the examples cited mostly concerned the situations where the requirements of the state of emergency were ignored or disrespected persistently; or where unlawful strike action was called for; or open air activities were conducted in violation of Law No. 2911; or where disciplinary procedures were applied to civil servants involved in politics in violation of their status. The Government finally indicates that domestic administrative or judicial ways of remedy are available against all acts of the administration. While the Committee notes that according to the observations the unions have had recourse to the authorities to resolve the issue with relative success it is bound to recall that pursuant to *Article 1(2)(b)* of the Convention, workers should be protected during employment from measures such as transfers and demotions that prejudice them by reason of union membership or participation in union activities and that participation in protests and strikes and press conferences constitute legitimate trade union activities. ***The Committee therefore requests the Government to take the necessary measures to prevent the occurrence of anti-union transfers and demotions in the future, and to ensure that if any anti-union discriminatory measures still remain in force, they are revoked immediately. It also requests the Government to reply to the KESK allegation with regard to the inclusion of discriminatory clauses in certain social equilibrium compensation agreements.***

Article 4. Promotion of collective bargaining. Cross-sector bargaining. In its previous comments, the Committee had requested the Government to review the impact of section 34 of the Act on Trade Unions and Collective Bargaining Agreements (Act No. 6356) which provided that a collective work agreement may cover one or more than one workplace in the same branch of activity and to consider its amendment so as to ensure that it does not restrict the possibility for the parties to engage in cross-sector regional or national agreements. The Committee notes that, according to the indications of the Government and the TİSK, the existing multi-level system of collective bargaining allowing for

workplace level, enterprise level and group level collective agreements as well as framework agreements at the branch level is a product of a long and well-established industrial relations system in Turkey and that it does not seem that social partners feel a need for change in this regard. Furthermore, the Committee notes that, in practice, cross-sector bargaining is conducted in public enterprises, resulting in the conclusion of "public collective labour agreement framework protocols". However, the Committee notes that pursuant to section 34 of Act No. 6356, cross-sector bargaining is not conducted and does not seem possible in the private sector. ***Taking due note of the information provided by the Government and the TİSK**, **and in view of the principle that it should be left to the parties to determine the level of bargaining, the Committee requests the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 in a manner so as to ensure that it does not restrict the possibility of the parties in the private sector to engage in cross-sector regional or national agreements should they so desire. It requests the Government to provide information on the steps taken in this regard.***

Requirements for becoming a bargaining agent. The Committee recalls that in its previous comments, it had noted that section 41(1) of Act No. 6356 initially set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent (progressively, 3 per cent) of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. It further recalls that the 3 per cent threshold was decreased to 1 per cent by Act No. 6552 of 10 September 2014 and that additionally, section 1 of Act No. 6356 stipulating that the 1 per cent membership threshold should be applied as 3 per cent with regard to trade unions that are not members of confederations participating in the Economic and Social Council was repealed by the Constitutional Court. Therefore the 3 per cent branch threshold was reduced to 1 per cent with regard to all trade unions. Furthermore, the Committee recalls that until 6 September 2018, legal exemptions from the branch threshold requirement were granted to three categories of previously authorized trade unions, so as to prevent the loss of their authorization for collective bargaining purposes. The Committee finally recalls that the Committee on Freedom of Association (CFA) has referred to it the legislative aspects of Case No. 3021 (see 382nd Report, June 2017, paragraph 144) concerning the impact of application of Act No. 6356 on the trade union movement and the national collective bargaining machinery as a whole. The Committee recalls that the CFA had considered that the branch of activity threshold, which is required by Act No. 6356, in addition to the workplace or enterprise threshold, to be able to conclude a collective labour agreement, is not conducive to harmonious industrial relations and does not promote collective bargaining in line with *Article 4* of the Convention, as it may ultimately result in the decrease in the number of workers covered by collective agreements in the country (see 373rd Report, October 2014, paragraph 529). The Committee notes that the Government does not indicate whether the exemption granted to the previously authorized unions have been extended beyond 6 September 2018. However, the Government indicates that if a consensus is reached between social partners on the branch threshold, the Ministry of Family, Labour and Social Services will give it due consideration in its work. According to the statistics provided in the Government report the rate of unionization in the private sector was 12.38 per cent in January 2018, and the rate of workers covered by collective agreements in 2017 was 14.4 per cent. ***Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold and noting that the exemption granted to the previously authorized unions was provisional, the Committee requests the Government to indicate whether the exemption has been extended beyond 6 September 2018, and the impact of the decision made in this regard on the capacity of previously authorized organizations to bargain collectively. It further requests the Government to continue reviewing the impact of the perpetuation of the branch threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the coverage of the national collective bargaining machinery, revise the law with a view to its removal.***

With regard to the workplace and enterprise representativeness thresholds, the Committee had noted in its previous comments, section 42(3) of Act No. 6356 which provides that if it is determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information is notified to the party which made the application for the determination of competence; and section 45(1) which stipulates that an agreement concluded without an authorization document is null and void. The Committee had recalled in this respect that if no union meets the required threshold, collective bargaining rights should be granted to all unions, at least on behalf of their own members and had requested the Government to ensure that the legislation is amended to bring it into conformity with this principle. In this regard, the Committee notes the observation of the TİSK, emphasizing that the Turkish collective bargaining system contains the principle that there is only one agreement for one workplace or business for one period, and this principle was adopted taking into account the damage that clashes and disputes in the past did to working peace. The TİSK further expresses its clear disagreement with suggestions of authorizing more than one union to bargain collectively for the same period. Taking due note of this observation, the Committee also recalls also the previous observations of TURK-İS indicating that the 50 per cent workplace threshold is difficult to reach in a context where flexible labour systems are proliferating and supported by the legislation. With regard to the enterprise threshold, the Committee recalls TURK-İS's indication that in cases where none of the trade unions organizing the workers in the same enterprise represents 40 per cent of the workers, or otherwise in the exceptional cases when two unions reach that same threshold, no union will be considered competent as a collective bargaining agent. While noting the TİSK's concern with regard to work peace, the Committee notes that in view of the previous observations of TURK-İS, the current workplace and enterprise

representativeness thresholds for collective bargaining do not seem conducive to the development of collective bargaining in Turkey as they deny a representative union that fails to secure absolute majority at workplace or a 40 per cent majority at the enterprise the possibility of bargaining and so deprive the members of such a union from the right to determine the conditions of their employment through collective bargaining. The Committee once again recalls that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all the unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee highlights that by allowing for the joint bargaining of minority unions, the law could adopt an approach more favourable to the development of collective bargaining without compromising the "one agreement for one workplace or business" principle adopted by the Turkish legislation. Likewise, the Committee considers that when more than one union reaches the enterprise threshold, they should be able to jointly engage in voluntary collective bargaining, at least on behalf of their own members. ***In light of the above, the Committee requests the Government to take the necessary measures to amend the legislation, in consultation with the social partners, and to provide information in this respect.***

In its previous comment, the Committee had requested the Government to provide information on any use of sections 46(2), 47(2), 49(1), 51(1), 60(1) and (4), 61(3) and 63(3) that provide for a variety of situations in which the certificate of competence to bargain may be withdrawn by the authorities for a variety of reasons (the failure to call on the other party to start negotiations within 15 days of receiving the certificate of competence; the failure to attend the first collective bargaining meeting or failure to begin collective bargaining within 30 days from the date of the call; failure to notify a dispute to the relevant authority within six working days; failure to apply to the High Arbitration Board; failure to take a strike decision or to begin a strike in accordance with the legislative requirements; and failure to reach an agreement at the end of the term of strike postponement) and to continue to review their application with the social partners concerned with a view to their eventual amendment, favouring collective bargaining where the parties so desire. The Committee had also noted the TİSK observation according to which in practice these provisions have no negative effect on the collective bargaining process as unions are very careful about the procedural rules and the Government's indication that these provisions are intended to guarantee, speed up and shorten the bargaining procedure. The Committee notes with ***regret*** that the Government has not provided any information in this regard. ***The Committee again requests the Government to review the application of these provisions with the social partners concerned on a continuous basis and to provide information on any use of them.***

Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. Material scope of collective bargaining. In its previous comment, the Committee had noted that section 28 of Act No. 4688 as amended in 2012 – restricts the scope of collective agreements to "social and financial rights" only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions. The Committee had also noted the Government's indication in this regard that the 2012 amendments of section 28 were meant to give collective bargaining a significantly wider role in determining the economic and social rights of public servants. The Government adds, however, that when the bargaining parties agree to a need for legislative change, collective agreement requires work for such change to be carried out, since the status of public servants is regulated by law. The Committee notes that in its latest report the Government indicates that the demands of the unions and their confederations that do not fall within the category of financial and social rights are received and considered at the other, more appropriate platforms established beside collective bargaining. Noting the Government's indication, the Committee once again recalls that public servants that are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. The Committee wishes to further recall however, that the Convention is compatible with systems requiring parliamentary approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, as long as the authorities respect the agreement adopted. ***Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee again requests the Government to take the necessary measures to ensure the removal of restrictions on matters subject to collective bargaining so that the material scope of collective bargaining rights of public servants not engaged in the administration of the State is in full conformity with the Convention.***

Collective bargaining in the public sector. Participation of most representative branch unions. In its previous comment, the Committee had noted that pursuant to section 29 of Act No. 4688, the Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are parties to the Collective Agreements concluded in the public service. The proposals for the general section of the Collective Agreement are prepared by the confederation members of the PSUD and the proposals for collective agreements in each service branch are made by the relevant branch trade union representative member of the PSUD. The Committee had also noted the observation of Türkiye KAMU-SEN in this regard, indicating that many of the proposals of authorized unions in the branch are accepted as proposals relating to the general section of the agreement meaning that they should be presented by a confederation pursuant to the provisions of section 29 and that this mechanism deprives the branch unions from the capacity to directly exercise their right to make proposals. Noting that although the most representative unions in the branch are represented in the PSUD and take part in bargaining within branch-specific technical committees, their role within the PSUD is restricted in that they are not entitled to make proposals for collective agreements, in particular where their demands are qualified as general or related to more than one service branch, the Committee had requested the Government to ensure that these unions can make

general proposals. The Committee notes the Government's indication in this regard that it is only natural that the proposals concerning all public servants are tabled by members representing the confederations in the PSUD that are the higher level organizations of the unions and that during the four collective bargaining rounds that took place since the inception of the system in 2012, public servants' unions participated in the negotiations as members of the PSUD and could in this way influence the general proposals. The Committee notes that the Government's indications seem to confirm that within PSUD only confederations can make proposals relating to issues relating to more than one branch. ***Considering that where joint bodies within which collective agreements must be concluded are set up, and the conditions imposed by law for participation in these bodies are such as to prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of the Convention are impaired, the Committee again requests the Government to ensure that Act No. 4688 and its application enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State.***

Collective bargaining in the public sector. Public Employee Arbitration Board. In its previous comment, the Committee had noted that pursuant to sections 29, 33 and 34 of Act No. 4688, in case of failure of negotiations in the public sector, the chair of the PED (the Minister of Labour) on behalf of public administration and the chair of the PSUD (currently head of MEMUR SEN confederation) on behalf of public employees, can apply to the Public Employees' Arbitration Board. The Board decisions will be final and will have the same effect and force as the collective agreement. The Committee had requested the Government to reply to the KESK's observation that the majority of the Public Employee Arbitration Board are designated by the employers and the council of Ministers which creates doubts about the independence of this body. It notes the Government's indication in this regard that pursuant to the KHK No. 703 dated 2 July 2018, the President of the Republic has authority to designate one senior judge to chair the Board as well as four members from the Ministries and public institutions and one member from the academics working in a relevant field. On the other hand, four members of the board are designated directly by the three most representative confederations of public servants' unions, and one member is designated by the President of the Republic from among the academics proposed by the said confederations. The Government concludes that as the Board's 11 members consist of one judge as chair, who has judicial independence and cannot receive orders from the executive power, and ten members, five of which are elected by the public servants' organizations, it is a well-balanced institution. In view of the information provided by the Government, the Committee notes that pursuant to the recently adopted KHK No. 703, seven of the 11 members of the Board including the chair are designated by the President of the Republic. The Committee considers that this selection process can create doubts as to the independence and impartiality of the Board. ***The Committee therefore requests the Government to take the necessary measures for restructuring the membership of the Public Employee Arbitration Board or the method of appointment of its members so as to more clearly show its independence and impartiality and to win the confidence of the parties.***

Collective bargaining in public sector. Social equilibrium compensation agreements. In its previous comment, the Committee had noted that in the local administration services branch, negotiations between the direct employer (local administration) and the unions representing public servants were conducted for a long time prior to the 2012 amendments and had resulted in the conclusion of numerous collective agreements from which tens of thousands of workers were benefiting, while as a result of the application of amended section 32 of Act No. 4688 the so-called "social equilibrium compensation" agreements are not considered as collective agreements anymore. It had therefore requested the Government to indicate whether all matters dealt with previously in direct bargaining between the local administration and organizations representing the employees can still be covered through the centralized bargaining system established under the amended legislation; and whether and how the organizations representing employees of local administrations are able to take part in the negotiations under the new system. The Committee notes that the Government reiterates in this regard that the procedure for concluding a collective agreement for the local administration branch of service is the same as for the other branches, and a collective agreement for this branch should be concluded between the PED and the majority trade union in the branch. The Government further indicates that as the agreements on social equilibrium compensation are not collective agreements for the purpose of Act No. 4688, a different procedure is made possible for the local administrations willing and financially able to conclude such agreements that is described in section 32 of the Act. Pursuant to this provision municipalities and provincial special administrations may conclude agreements on social equilibrium compensation directly with the most representative public servants' union in the relevant municipality or administration. The Committee also notes the observations of KESK referring to agreements concluded in the municipalities of Gaziantep and Kocaeli pursuant to section 32 of Act No. 4688. The Committee therefore notes that the practice of direct negotiation and conclusion of social equilibrium compensation agreements at the local administration services continues within the framework established in section 32.

[The Government is asked to reply in full to the present comments in 2019.]