REPORT IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Denmark presented by
the Danish Union of Teachers (DUT)
supported by
the Salaried Employees and Civil Servants Confederation (FTF)

Allegations: The complainant organization alleges that the Government violated the principle of bargaining in good faith during the collective bargaining process and extended and renewed the collective agreement through legislation without consultation of the workers' associations concerned

230. The complaint is contained in communications from the Danish Union of Teachers (DUT), supported by the Salaried Employees and Civil Servants Confederation (FTF), dated 29 August and 15 October 2013.

231. The Government forwarded its response to the allegations in communications dated 15 October and 25 November 2013.

232. Denmark has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

233. In its communications dated 29 August and 15 October 2014, the DUT alleges the violation by the Government of Conventions Nos 87, 98 and 151, all ratified by Denmark.

234. The complainant indicates that the DUT negotiates the collective agreements for teachers every second or third year with two employers' organizations: Local Government Denmark (LGDK) and the Ministry of Finance. The LGDK is the organization representing the municipalities, i.e. the employers for teachers in primary and lower secondary schools; in this regard, the Government has legislative power with regard to curricula, syllabus, etc., as well as issues related to the content of teaching. In relation to other educational institutions such as colleges, universities, vocational education, training institutions and private but state-funded schools, the Government carries both legislative and employer tasks; its function as an employer is carried out by a department within the Ministry of Finance called "The Agency for the Modernization of Public Administration" (Modernization Agency).

235. This complaint relates to two matters arising from the collective bargaining in 2012–13 between the Danish Union of Teachers on the one side, and the LGDK and the Modernization Agency on the other side: (i) the start-up and initial preparations for the 2012–13 collective bargaining; and (ii) the drafting and preparation of the Government's regulatory intervention in spring 2013 (Act No. L409).

236. In the complainant's view, the negotiations with the DUT have been carried out by the Modernization Agency and LGDK in a very tight cooperation and with involvement of the Government. Albeit absolutely vital to keep the balance between the legislator and the employer, the role of the employer and the role of the legislator have not been strictly separated and have even been mixed during the negotiations. From a very early stage in the collective negotiations, LGDK could not carry out free, voluntary and true negotiations.

237. The complainant indicates that the negotiations concerning renewal of the collective agreements with effect from 1 April 2013 began in autumn 2012. The finance agreement with the LGDK and the Government for 2012 stated as follows: "the Government and LGDK agree on strengthening focus on obtaining more teaching time for the current resources in primary and lower secondary schools and in upper secondary schools. As part of this process, on the basis of, amongst other things, existing analyses of teachers' working hours, there will be collaborative work to assess whether legislation and the relevant collective agreements provide a good framework for the efficient utilization of teachers' resources". According to the complainant, in the autumn of 2012, the DUT became aware

of a document of 18 October 2012 written by a working group of representatives from both the Modernization Agency and LGDK and called Annex 11 – Reform of Content lifting the Danish Folkeskole, which basically stated that the Government's new School Bill should be financed by changes in the agreement on teachers' working hours. This agreement had been negotiated in 2008 between LGDK and the DUT, and the Ministry of Finance and the Modernization Agency were not part of it. The complainant denounces that, even before the negotiations started, the employers and the Government had determined with which result they would settle, and that the Government had a clear interest in the outcome of the negotiations with the DUT in order to ensure conditions and financing of their new School Bill, as mentioned in the 18 October paper. In accordance with the Access to Information Act, the DUT sought access to the working papers including the 18 October 2012 paper but access was denied; this was recently criticized by the Danish Ombudsperson, but without any change in the decision.

238. According to the complainant, negotiations took place in parallel identical sequences, with the same collective bargaining demands being made by the two employer partners for both state schools or institutions and municipal schools, and with the same denial of true negotiations. During the negotiations, the DUT tabled several proposals that met some of the requirements from both LGDK and from the Modernization Agency. However, in the complainant's view, the employer parties showed no interest in the actual negotiations, and the union's proposals for changes or additions to the employers' demands were not negotiated in reality. In all negotiation sessions, the employers only presented the proposal they had presented at the first meeting in December 2012. The complainant criticizes that the employers requested the removal of all rules on working hours (including special rules for older workers) preferring that future rules only regulate the "external environment" for working hours; but at the same time, they were unwilling to elaborate in detail on the requested new rules on working hours and repeatedly refused to submit a draft agreement or other written material that could describe how working hours could be organized. The complainant therefore believes that by unilaterally determining the outcome of collective bargaining in advance, the Government and LGDK clearly undermined a long-standing well-functioning system of free negotiation as stated in ILO Conventions.

239. Furthermore, the complainant indicates that an agreement for upper secondary (high school) teachers was reached in mid-February 2013 between the relevant organization and the Modernization Agency, and this agreement complied with demands from the Modernization Agency. A vote among upper secondary teachers showed that 85 per cent were against the agreement, but because of certain rules on coordination of votes, the agreement was adopted. According to the complainant, LGDK presented the DUT with a draft agreement with the exact same content as the agreement with upper secondary teachers. This was the first time during the negotiations that LGDK presented a written description or example of their demands.

240. The complainant states that, at the end of February 2013, during an interruption of a meeting, where the parties were working on documents separately, LGDK announced surprisingly by telephone that the negotiations had collapsed. According to the rules, they subsequently issued a notice of lockout of all teachers to start on 1 April 2013. The DUT faced exactly the same situation, when the Modernization Agency announced a collapse in negotiations and issued the same notice of lockout for the teachers employed in state schools only three days later.

241. The complainant adds that, after the lockout notice had been issued, the continuing negotiations in March were led by the Conciliation and Arbitration Institution. However, even in this forum and with the power and authority of the conciliator, there was still no movement from the employers at all, and it was not possible even under these circumstances to reach an agreement. Subsequently, 55,000 teachers were locked out on 1 April 2013. Approximately 800,000 students from public schools, private but state-funded schools and vocational education and training institutions were affected.

242. It is the complainant's view that the lockout was a very drastic step to take. Lockouts and strikes are legal means of action, but a lockout of this extent – from two public employer organizations –

had never been seen before. This was the first time ever that public employers had implemented the lockout option without the unions having at first called a strike.

243. The complainant indicates that the lockout lasted until 27 April 2013, when it was stopped by a new Act. The Prime Minister announced on 25 April 2013 that the Government would submit a Bill, and the Act was adopted on 26 April 2013 and entered into force on 27 April 2013. Act No. L409 extends and renews the collective agreements for certain groups of employees in the public sector, including members of the DUT (copy enclosed with the complaint).

244. Whereas the Act was presented as a "balanced intervention that satisfied both parties", the complainant completely disagrees with this point of view stating that the changes and conditions in the entire Act only correspond to the demands tabled by LGDK and the Modernization Agency during the negotiations. The complainant claims notably that: (i) the technical calculations underlying the intervention were made solely in consultation with the employers; (ii) the calculations do not take into account the high amounts of money allocated in connection with the previous collective bargaining to lower pay increases to ensure more working time for specific tasks (e.g. preparation and duties as a form teacher) or additional time for teachers of pupils with special needs; in the complainants' opinion, the Government has expropriated funds from collective agreements amounting to several hundred million Danish kroner; (iii) for the first time in the context of a legislative intervention in collective agreements, only the employers have assisted the Ministry of Employment in the extensive work of drafting the Bill; (iv) the Act met the employers' demands for greater flexibility and removing the conditions agreed with the union regarding planning and performance of working hours; and (v) the Act also introduced a change in conditions for teachers over 60 years old, who were entitled to a reduction in working time since 1910 (initially only a reduction in the number of annual teaching hours, it evolved after many years of negotiations into a general reduction of compulsory working hours); the entitlement, which has nothing to do with the working hour agreement, has been withdrawn by the Government's intervention with a phase-out over three years and a compensation for teachers with an annual supplement that the complainants do not consider to correspond to the value of the age reduction.

245. The complainant denounces that, although the DUT had tried to influence the outcome up to the adoption of the Act, the Union was not involved in the work on the Bill, and its proposals were not heard or considered, in stark contrast to LGDK, who in fact helped the Government to draw up the main content of the Bill. When presenting the Bill, the Minister of Finance and the Minister of Employment stated, that in the course of preparation of the Bill, the Government had consulted both LGDK and the Modernization Agency, and that the relevant ministries did not and had no plans of consulting the DUT. According to the complainant, the Act repeals working hour rules, making Denmark an exception in the Western world, with no regulation of teachers' teaching hours by either contract or law. No other public servants have rules on working hours and vacation like those to which teachers will be subject to. The working hour rules (for teachers) take their starting point in rules on working hours for government employees; but deviations from those rules are in the employer's favour. The complainant states that the demands for increased flexibility, for example in relation to working hours, often submitted by employers during collective bargaining, are usually met by employees in exchange for concessions in other areas. In its view, the adopted Act favours only the employers, as it gives full flexibility without any concessions in return.

246. In conclusion, the complainant feels that there has been an inappropriate and dangerous blurring of the role of the Government as both legislator and employer, and that the public employers – both LGDK and the Modernization Agency – have used all the means at their disposal to impose their own demands contrary to the democratic process that is normal procedure as well as the right to free and equal negotiations.

247. Firstly, the Government neglected the right to free talks and instead took control of the negotiations with the sole purpose of ensuring that the agreement on working hours was repealed in its entirety and replaced by new rules for teachers' working hours, making it possible to finance the Government's new School Bill. According to the complainant, it has been clear from the start that the negotiations have been unilaterally organized by the LGDK, the Modernization Agency and the Gov-

ernment, and that there was no intention to hold collective discussions or negotiations at all. Even negotiations in the presence of the conciliation institution did not involve real collective bargaining or discussions. The Government's behaviour has de facto served to hamper the freedom of collective bargaining. Thus, the Government has failed to observe the obligation to encourage and promote the development of collective bargaining between public authorities and employers' and employees' organizations. It is also the complainant's view, that the industrial action chosen by the Government and LGDK was disproportionate to the objective; the 4-week lockout was excessive.

248. Secondly, the complainant claims that this is the first time in Danish history that, when introducing a Bill to end industrial action, the Government legislator has to such an extent only listened to one party during the entire process. When governments have previously put an end to industrial action by introducing a new law, they have always sought to meet both parties and to balance the Bill in accordance with their different demands. In the complainant's view, Act No. L409, however, only addresses the demands from the Government and LGDK, who have used all means to impose their demands as public employers and have ignored the normal democratic, negotiation process.

249. The complainant calls on the Committee to adopt a serious criticism of the negotiations; to condemn the unilateral drafting of the adopted legislative intervention; to make recommendations on the appropriate guarantees in order to protect the interests of employees which have been effectively stripped during the collective bargaining; and to ask the Government to present a report within a reasonable time limit on any corrective measures that might be taken.

B. The Government's reply

250. In its communication dated 15 October 2013, the Government first provides general information on the collective bargaining system in the public sector in Denmark. The public sector is composed by municipalities, regions and state. With regard to collective bargaining, the municipalities are represented by LGDK and the State is represented by the Modernization Agency of the Ministry of Finance. While the LGDK is a private organization that has been established in order to attend to the interests of the municipalities, the Modernization Agency is a government institution. When the collective agreements in the public sector expire – normally every second or third year – LGDK and the Modernization Agency negotiate with their counterparts in order to ensure a renewal of the collective agreements.

251. The Government indicates that the framework for these negotiations is no different from the framework in the private sector. In Denmark there is no legislation on how the social partners conduct their negotiation neither in the private sector nor in the public sector. The bargaining system is based on voluntarism and free bargaining between the two sides. In order to underpin the collective bargaining system, the machinery for voluntary negotiations between the employers and the workers, the Parliament has adopted an Act on Conciliation in Industrial Disputes which aims at conciliating the parties, especially in connection with the renewal of collective agreements. Therefore, if the parties to the negotiations cannot themselves agree on renewing the collective agreements and prepare for industrial action in accordance with the rules, the negotiations continue under the auspices of the Institution for Conciliation and Arbitration. The tasks and powers of the Official Conciliator are laid down in the Act on Conciliation in Industrial Disputes. The Government has no influence on the actions of the Official Conciliator in connection with renewal of collective agreements. The Official Conciliator is, inter alia, empowered to postpone the industrial action and to put forward a mediation proposal.

252. According to the Government, in those rare and exceptional situations where the Government submits a bill to intervene legislatively in lawful strikes or lockouts, the intervening bill will normally be drafted in accordance with the mediation proposal that was put forward by the Official Conciliator. This is quite natural since the purpose of legislative intervention in these exceptional situations is not to regulate pay and working conditions legislatively but to put an end to the dispute in circumstances where it would be irresponsible to let the dispute continue. Furthermore, the mediation proposal will normally be technically well laid out and, accordingly, a good underlying basis for drafting the legislation.

253. As regards the role of the Ministry of Employment, the Government states that the Ministry of Employment does not in any way participate in collective bargaining. The role of the Ministry of Employment is strictly limited to monitoring the collective bargaining and in particular occurrences the succeeding industrial dispute and, with regard to the industrial dispute, to keeping the Government informed about the consequences of the dispute for the population and for society in general. If the Government decides that the consequences of the industrial dispute for the population and society in general are excessively grave and that the dispute should be brought to an end through legislative intervention, it is the Ministry of Employment that drafts the legislative intervention in accordance with the government decision. In these rare and exceptional situations, it is the task of the Minister of Employment to submit the bill to the Folketing (Danish Parliament). It is the Folketing who may put an end to the industrial dispute by adopting the bill. The Government stresses that it is instrumental and fundamental that the Ministry of Employment does not go beyond its neutral role of monitoring and informing as long as collective bargaining is taking place or the succeeding industrial dispute is going on without any Government decision to intervene. Regardless as to whether the bargaining or dispute is in progress in the private or the public sector, any further involvement by the Ministry of Employment could be regarded as interference in a process that is definitively the domain of the two sides of industry.

254. According to the Government, the Ministry of Employment: (i) has not taken part in the preparation of the collective bargaining process; (ii) has not been informed or called in in any way with regard to the cooperation or coordination that may have taken place on the employer side; and (iii) has not been involved in e.g. the decision to lock out the teachers. The Ministry of Employment has been very aware that there must be a cast iron fence between the Government's role as employer and the Government's duty to monitor and eventually, if the consequences of the industrial dispute are unacceptably harmful for the population and the society in general, to intervene in the industrial dispute.

255. The Government considers that the role of the Ministry of Employment changed when the Government decided to intervene in the industrial dispute by submitting a bill to the Folketing. The Ministry of Employment must draft the bill and do it in a very short period of time to end the industrial dispute as soon as possible. The drafting of the bill was technically complicated and in the absence of a mediation proposal from the Official Conciliator it may be necessary to obtain technical assistance from relevant experts outside the ministry. It must be underlined, however, that it is the Government that lays down the contents of the bill that is to be submitted to the Folketing. The role of the Ministry of Employment and of the experts that may assist with necessary information for the drafting of the bill in accordance with the Government's decision is solely of a technical, not a political, nature.

256. The Government notes that the complaint basically relates to the question about the Government's intervention and overall management in primarily the initial phase of the negotiations and along the way and to the question of the drafting and preparation of the regulatory intervention which is seen to be biased towards the employer's side.

257. Regarding the first question, the "arms-length principle" which has been described above and has been adhered to in this matter should be borne in mind. There has been no intervention from the Government in the negotiations and the overall management of the negotiations has on the employer's side been strictly a task for the Modernization Agency and LGDK. The Modernization Agency is a government agency and as such this agency of course implements government policies but this cannot be considered intervention. It is normal practice that there is cooperation between employers' organizations on the one side and between workers' organizations on the other side. Therefore the Government considers it understandable and certainly not condemnable if there has been close cooperation between LGDK and the Modernization Agency before and during the negotiations but to the extent that such cooperation has taken place it is clear that it is not the Government as such who has been negotiating. Bearing in mind the "arms-length principle" and the fact that the negotiations on the employers' side have been carried out by the abovementioned employers, it is not possible for the Government as such to comment further on the complainants' allegations that the negotiations were not "true" or "free" negotiations. It would constitute a dangerous path of interference if the Ministry

of Employment or the Government as such should enter into some kind of supervisory role with regard to these negotiations.

258. Regarding the second question, the Government points out that the content of this kind of intervening legislation is solely a political question, and that it is a parliamentary decision to actually adopt such a bill. The Government recognizes that, in the absence of a mediation proposal from the Official Conciliator, it was necessary to seek technical support from the Modernization Agency. It was no secret for the Folketing that the Modernization Agency had supported the drafting of the bill, and it would not have been possible to serve the purpose of the intervening legislation without this support. The bill was adopted in the Folketing with a large majority. The Government agrees with the complainant that this negotiation process and also the drafting and preparation of the legislative intervention have been unusual in some ways. In most of the rare and exceptional situations where the Government submits a bill in order to intervene legislatively, the content of the bill is generally based on the mediation proposal from the Official Conciliator but in this particular case there was no such mediation proposal to build on. Noting that the complainant does not agree with the government view that the bill was "a balanced intervention that satisfied both parties", the Government considers it fully understandable that any of the two sides of industry does not consider an intervening piece of legislation satisfactory and absolutely legitimate such that the legislation is therefore criticized. It should be borne in mind, however, that the basis for such criticism is political rather than legal.

259. In conclusion, the Government states that it cannot – without interfering in the autonomy of the social partners – comment as to whether there has been a bona fide will to negotiate by any of the two sides of industry. It can, however, emphasize that there has been no intervention from the Government in the negotiations and in the industrial dispute before the decision that a bill should be submitted to the Folketing to bring an end to the dispute. The Government further acknowledges that it has been using technical assistance from the Modernization Agency in the drafting and preparation of the bill, which has been openly admitted and communicated to the Folketing when the bill was adopted. The Government considers however that, due to the circumstances, it did not have any choice regarding the use of this technical assistance, if the purpose of the bill was to be achieved. In its view, since it was merely technical assistance that was used, it does not constitute a violation or a neglect of any of the ILO Conventions mentioned by the complainants. The Government considers it regrettable that intervening legislation had to be adopted and that the two sides of industry could not reach agreement on a renewal of the collective agreement; but, in the circumstances, the Government believes that it had to act and do it in a way that was politically responsible and could obtain support from the Folketing.

C. The Committee's conclusions

260. The Committee notes that, in the present case, the complainant alleges that the Government violated the principle of bargaining in good faith during the collective bargaining process and extended and renewed the collective agreement through legislation without consultation of the workers' associations concerned. The Committee notes that the complaint relates to matters arising from the collective bargaining in 2012–13 between, on the worker side, the DUT and, on the employer side, the LGDK (organization representing the municipalities, i.e. the employers for teachers in primary and lower secondary schools) and the Modernization Agency (department within the Ministry of Finance carrying out the function of employer for teachers in other educational institutions such as colleges, universities, vocational education, training institutions and private but state-funded schools).

261. In particular, the Committee notes the complainant's allegations that:

(a) the negotiations were carried out by the Modernization Agency and LGDK (employers) in a very tight cooperation and with involvement and intervention of the Government (legislator). The two roles have not been separated during the negotiations thus not allowing for free, voluntary and true negotiations. Even before negotiations commenced in autumn 2012, the result had been unilaterally determined (in a paper of 18 October 2012) by the employers and the Government who had a clear interest in changes being made to the 2008 agreement on teachers' working hours between LGDK

and the union to ensure financing of its new School Bill. The above is illustrated by the fact that the negotiations in parallel with the two employers took place in identical sequences:

(i) with the same collective bargaining demands being made by the two employer partners for both state schools and municipal schools (only one proposal, the proposal made at the first meeting to remove all existing rules on working hours for teachers, was repeatedly presented);

(ii) with the same denial of genuine and fair negotiations (from the start no intention or attempt and lack of interest in the negotiation of the several proposals tabled by the union meeting some of the employers' demands or of the changes or additions to the employers' demands suggested by the union; unwillingness to elaborate further upon the requested new rules on working hours);

(iii) with the first written proposal presented by the LGDK end of February being identical to the agreement for upper secondary teachers reached in mid-February 2013 between another union and the Modernization Agency;

(iv) with the surprising announcement end of February 2013 by the LGDK followed by the Modernization Agency of a collapse in negotiations and issuance of a lockout notice for all teachers as of 1 April 2013;

(v) without any movement from the employers even during the negotiations led by the Conciliation and Arbitration Institution; and

(vi) the lockout which lasted four weeks and affected 55,000 teachers and 800,000 students from public and private state-funded schools and vocational education and training institutions was disproportionate to the objective, excessive and implemented for the first time by public employers without the unions having first called a strike; and

(b) the lockout was stopped by a new Act (No. L409), announced by the Prime Minister on 25 April 2013, adopted by Parliament on the following day and entered into force on 27 April 2013, which amends and extends the collective agreements for certain groups of employees in the public sector, including members of the DUT. The Act is not, as presented by the Government, a "balanced intervention that satisfied both parties", since its provisions solely address the demands tabled by LGDK and the Modernization Agency for greater flexibility and repeal of working hour rules previously agreed with the union, without any concessions in return. For the first time in the context of a legislative intervention in collective agreements, the Government was assisted only by the employers in the extensive work of preparing and drafting the Bill, and the technical calculations underlying the regulatory intervention were made solely in consultation with LGDK and the Modernization Agency. The Union was not involved in the work on the Bill, and its proposals were not heard or considered, in stark contrast to the employers.

262. Furthermore, the Committee notes the Government's indications that:

(i) the Ministry of Employment has not taken part in the preparation of the collective bargaining process, has not been informed or called in in any way with regard to the cooperation or coordination that may have taken place on the employer side, and has not been involved in e.g. the decision to lock out the teachers;

(ii) the "arms-length principle" has therefore been adhered to in this matter, and there has been no intervention from the Government in the negotiations, the overall management of the negotiations on the employer's side being strictly a task for the Modernization Agency and LGDK;

(iii) the Modernization Agency as a government agency of course implements government policies which cannot be considered intervention, and, since it is normal practice that there is cooperation between employers' organizations on the one side and between workers' organizations on the other side, it is understandable and certainly not condemnable if there has been close cooperation between LGDK and the Modernization Agency before and during the negotiations, which to the extent that

such cooperation has taken place does not mean that it is the Government as such who has been negotiating;

(iv) bearing in mind the "arms-length principle" and the fact that the negotiations on the employer's side have been carried out by the above employers, it is not possible for the Government as such – without interfering in the autonomy of the social partners – to comment as to whether there has been a bona fide will to negotiate by any of the two sides of industry;

(v) the Government has only intervened in the industrial dispute when it took the decision that a bill should be submitted to the Folketing to bring an end to the dispute;

(vi) the role of the Ministry of Employment then changed, as it had to draft the bill, which was technically complicated, in a very short period of time;

(vi) it is the Government that lays down the contents of this kind of intervening legislation to be submitted to the Folketing (political question), it is a parliamentary decision to actually adopt such a bill, and the role of the Ministry of Employment and of the relevant experts outside the ministry that may assist with necessary information for the drafting of the bill in accordance with the Government's decision is solely of a technical nature;

(vii) in most of the rare and exceptional situations where the Government submits a bill in order to intervene legislatively, the content of the bill is based on the technically well laid-out mediation proposal from the Official Conciliator but in this case there was no such mediation proposal to build upon;

(viii) albeit unusual, it was necessary to seek technical assistance in the drafting and preparation of the bill from experts, i.e. the Modernization Agency, if the purpose of the intervening legislation was to be achieved;

(ix) since it was merely technical assistance that was used, it does not constitute a violation or a neglect of any of the ILO Conventions mentioned by the complainant;

(x) while it is regrettable that the two sides of industry could not agree on a renewal of the collective agreement, in the circumstances, the Government had to act through legislative intervention and do it in a way that was politically responsible and could obtain support from the Folketing (the bill was adopted with a large majority); and

(xi) it is understandable that any of the two sides of industry does not consider an intervening piece of legislation satisfactory and it is legitimate to criticize it; but the basis for such criticism is political rather than legal.

263. With regard to the matters raised in the complaint concerning the initial phase of collective bargaining, the Committee notes the divergence of views of the complainant and the Government as to the involvement of the latter in the negotiations. Whereas the complainant finds that the Government has intervened and controlled the negotiations in such a way as to blur the roles of employer and legislator, predetermine the desired outcome and preclude free and genuine negotiations, the Government claims that the "arms-length principle" has been respected throughout (which is why it cannot comment on the bona fide of the parties) while it acknowledges a non-condemnable cooperation between the two employers of which one was a government agency implementing government policies. In this regard, the Committee emphasizes that it has always held that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties. The Committee also recalls that the public authorities should promote free collective bargaining and not prevent the application of freely concluded collective agreements, particularly when these authorities are acting as employers or have assumed responsibility for the application of agreements by countersigning them. In particular, state bodies should refrain from intervening to alter the content of freely concluded collective agreements [see Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006, paras

935, 1001 and 1011]. Observing that the collective agreements have been extended until 31 March 2015, the Committee expects that, during the 2014–15 collective bargaining rounds between the parties, the Government will endeavour, in line with the principles enounced above, to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time. The Committee requests to be kept informed of developments.

264. With regard to the matters raised in the complaint concerning the preparation and drafting of the bill, the Committee notes that the Government recognizes that it has consulted the Modernization Agency (employer) during the preparation of the intervening legislation which it justifies with the absence of a mediation proposal as underlying basis for the bill and the lack of necessary expertise for its speedy drafting. Regretting that the Government does not provide any explanation as to why it did not consult the DUT, the Committee recalls that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers. The Committee has previously considered it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests. In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement [see Digest, op. cit., paras 999, 1068 and 1075]. The Committee considers that the above principles are all the more valid, when a Government opts, in exceptional circumstances, for legislation to put an end to a dispute; and with a view to avoiding any impression of favouritism. In light of the above, the Committee expects that, during the 2014–15 collective bargaining rounds between the parties, the principles set out above will be fully respected. The Committee requests to be kept informed of developments.

The Committee's recommendations

265. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee expects that, throughout the 2014–15 collective bargaining negotiations between the parties, the Government will endeavour, in line with the principles set out in the Committee's conclusions, to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time. The Committee requests to be kept informed of developments.

(b) The Committee expects that, during the 2014–15 collective bargaining rounds, the principles concerning consultation with the organizations of workers and employers set out in its conclusions will be fully respected. The Committee requests to be kept informed of developments.