

Italy (ratification: 1952)

The Committee notes the Government's report received in October 2006, its replies to its previous comments and the substantial attached documentation, including the explanatory circulars relating to the implementation of Legislative Decree No. 124 of 23 April 2004 on the rationalization of inspection duties relating to social security and labour.

1. *Article 3, paragraph 2, of the Convention. Inspection of conditions of work and monitoring and sanctioning of illegal employment and unauthorized work.* As the Committee emphasized in its previous comments, the role of the labour inspectorate, pursuant to the provisions of the Convention, is to monitor not the legality of the employment relationship but the conditions in which the work is performed. In paragraph 77 of its 2006 General Survey on labour inspection, the Committee recalled that neither the Labour Inspection Convention, 1947 (No. 81), nor the Labour Inspection (Agriculture) Convention, 1969 (No. 129), contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. In this respect, it referred to Article 4 of Convention No. 129, which states that the system of labour inspection in agriculture must apply to all employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. The Committee pointed out that, during the preparatory work for the adoption of this provision, most of the member States which responded considered that the existence of a wage relationship with the operator should be the determining factor in defining the workers covered. In paragraph 161 of the abovementioned General Survey, the Committee observed that, in view of the growing numbers of foreign and migrant workers in many countries, the labour inspectorate is often asked to cooperate with the immigration authorities and that such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions. In this respect, it should be emphasized that the expression "while engaged in their work" used in *Article 3, paragraph 1(a)*, of the Convention indicates that the protection afforded by labour inspection must be provided to workers throughout their period of employment. The Committee notes that numerous structural and legislative measures adopted to implement Legislative Decree No. 124/2004 focus on strengthening the powers of the Ministry of Labour and Social Policy for combating unauthorized work and illegal employment and that labour inspectors play a major role in this process. It considers that the role assigned to labour inspectors in this context may severely jeopardize the performance of their original duties as defined by the Convention, namely to ensure that workers are protected against the imposition of conditions of work which are contrary to the legislation. The achievement of this objective by inspectors largely depends on the cooperation of all workers, especially in the form of reports and complaints to labour inspectors, irrespective of the type or form of the contract of employment. Systematically involving labour inspectors in coordinated operations to combat illegal employment does nothing to promote a climate of confidence, which is

necessary for such cooperation on the part of workers having an irregular status as regards their residence and employment. On the contrary, it represents an obstacle to the opportunities for inspectors to obtain information regarding the conditions of work experienced by workers in establishments to which this applies the most.

The Committee cannot therefore overemphasize the need for the Government to take measures to distinguish with sufficient clarity the powers and working methods of labour inspectors from those of the officials of other bodies responsible for combating illegal employment. Such a separation in no way excludes the possibility of establishing a form of collaboration which involves inspectors drawing the attention of the competent authorities to employers in breach of the legislation regarding conditions of work and the protection of workers, especially as regards abuses reported with regard to workers whose situation is irregular. In order to remain in conformity with the purpose of their duties, the action taken by inspectors should enable the implementation of legal proceedings against employers guilty of contraventions, entailing not only the imposition of adequate penalties in accordance with the various categories of contraventions but also the requirement to pay any outstanding sums owed to the workers concerned for the actual duration of their period of employment. The financial consequences (fines and workers' wage claims) resulting from the actions of the labour inspectorate can constitute an effective deterrent against the employment of persons in an irregular situation with regard to labour legislation. ***The Committee hopes that the Government will take steps to re-establish labour inspectors in their duties defined by the Convention and limit their cooperation with the immigration authorities to an extent that is compatible with the purpose of the Convention. It would be grateful if the Government would keep the Office informed of all progress made in this respect or, if necessary, inform it of any difficulties encountered.***

2. Articles 20 and 21. Publication and communication to the ILO of an annual inspection report. The Committee notes that, on account of institutional reforms undertaken in relation to labour inspection, including methods for the collection of statistics, the Government considers that it is not appropriate to publish an annual report in the immediate future. ***The Committee hopes, however, that it will be possible to publish this report in the near future, that it will contain detailed information on each of the matters covered by Article 21 and that a copy will be sent to the ILO within the deadlines required by Article 20.***