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Freedom

OF ASSOCIATION AND COLLECTIVE BARGAINING

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Report III (Part 4B)

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Information and reports on the application
of Conventions and Recommendations

General Survey of the Reports on the Freedom of Association and and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)

CHAPTER V

The right to strike

Introduction

136. Strike action, which is the most visible form of collective action in the event of a labour dispute, is often seen as the last resort of workers' organizations in the pursuit of their demands. It is also the means of action which gives rise to the most controversy, which is reflected in the discussions within the supervisory bodies and in particular in the large number of complaints presented to the Committee on Freedom of Association on this subject. The right to strike also raises special difficulties in the public and semi-public sectors, where the concept of employer is not without ambiguities and where the problem of essential services arises more frequently than in other sectors, since the exercise of this right inevitably affects third parties who sometimes feel that they are the victims in disputes in which they have no part. The Committee believes that it would be useful to explain in some detail its views on this essential feature of industrial relations, with reference to the existing substantive provisions and the process which has led it to establish certain principles on this subject. However, before proceeding, it would like to make some general observations.

137. First, strike action cannot be seen in isolation from industrial relations as a whole. It is true that it is a basic right, but it is not an end in itself. Strikes are expensive and disruptive for workers, employers and society and when they occur they are due to a failure in the process of fixing working conditions through collective bargaining which should remain the final objective.

138. Furthermore, more than any other aspect of industrial relations, strike action is often the symptom of broader and more diffuse issues, so that the fact that a strike is prohibited by a country's legislation or by a judicial order will not prevent it from occurring if economic and social pressures are sufficiently strong. In addition, while the judicial authorities generally have to confine themselves to applying existing legal rules to strikes, it is not unusual for workers and their unions to launch strikes precisely with the aim of having these rules changed, which inevitably leads to differences of opinion and even further disputes.

139. The Committee also emphasizes that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common-law system strikes are regarded as having the effect of terminating the employment contract,

leaving employers free to replace strikers with new recruits.[1] In other countries, when a strike takes place, employers may dismiss strikers or replace them temporarily, or for an indeterminate period. Furthermore, sanctions or redress measures are frequently inadequate when strikers are singled out through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal); this raises a particularly serious issue in the case of dismissal, if workers may only obtain damages and not their reinstatement. In the Committee's view, legislation should provide for genuine protection in this respect, otherwise the right to strike may be devoid of content.

140. Lastly, one should not overlook the sociological dimension of strike action, which, like any other social phenomenon, is affected by economic, social, technological and other changes to which it has to adapt. To name only a few examples, technological advances, increasing globalization and the development of multinational enterprises — all factors profoundly affecting the conditions in which goods and services are produced and their relationship with work — cannot but influence the issue of strike action. Change can also be seen in the motives underlying strikes: while most strikes used to support demands for improved pay or other working conditions, strikes have recently been held in some countries "for the protection of employment" or "against delocalization", sometimes with backing from employers.

141. The ILO instruments are the primary source of law in this context, but the right to strike is also recognized in several other international or regional instruments, and in national legislation and practice.

ILO instruments

142. Although the right to strike is not explicitly stated in the ILO Constitution or in the Declaration of Philadelphia, nor specifically recognized in Conventions Nos. 87 and 98, it seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87.[2] The right to strike was mentioned several times in that part of the report describing the history of the problem of freedom of association and outlining the survey of legislation and practice.[3] In the conclusions and observations of the same report, it was also mentioned in connection with the special case of public servants and voluntary conciliation.[4] However, during discussions at the

[1] Although this is rare in practice, workers are vulnerable to this type of measure. See, for example, CFA, 277th Report, Case No. 1540 (*United Kingdom*), paras. 47-98.

[2] ILC, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*.

[3] ibid., pp. 30, 31, 34, 46, 52, 73-74.

[4] "... the recognition of the right of association of public servants in no way prejudges the question of the right of such officials to strike, which is something quite apart from the question under consideration", ibid., p. 109; "... if the parties have recourse by mutual agreement to an agency for conciliation, they should be obliged to refrain from strikes or lockouts during the procedure of conciliation." ibid., p. 121.

Conference in 1947 and 1948, no amendment expressly *establishing* or *denying* the right to strike was adopted or even submitted. At present, only Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105),[5] and Paragraphs 4, 6 and 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92),[6] mention strike action, albeit indirectly. However, several resolutions of the International Labour Conference, regional conferences and industrial committees[7] refer to the right to strike or to measures to guarantee its exercise.

Other international and regional instruments

143. Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights provides that the States parties to the Covenant undertake to ensure, inter alia, "... the right to strike, provided that it is exercised in conformity with the laws of the particular country".[8] At the regional level, article 6(4) of the European Social Charter of 1961 expressly recognizes the right to strike in the event of a conflict of interests, subject to the obligations resulting from collective agreements in force.[9] Article 27 of the Inter-American Charter of Social Guarantees of 1948 stipulates that: "Workers have the right to strike. The law shall regulate the conditions and exercise of that right."[10] The

[5] Forced or compulsory labour is prohibited ... "(d) as a punishment for having participated in strikes;".

[6] "4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress ...

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."

[7] For example: para. 15 of the resolution concerning trade union rights and their relation to civil liberties, 1970; para. 1(3) of the resolution concerning protection of the right to organize and to bargain collectively, Third Labour Conference of the American States which are Members of the International Labour Organization, Mexico, 1946; paras. 13(2) and 17 of the Resolution concerning industrial relations in inland transport, 1947.

[8] Of the 83 member States of the ILO which have ratified *both* Convention No. 87 and the Covenant, four (*Japan, Netherlands, Norway, Trinidad and Tobago*) registered a reservation specifically concerning Article 8(1)(d). Four others (*Algeria, India, Mexico, New Zealand*) accompanied their ratification with a declaration or general reservation concerning Article 8. Japan made a declaration of interpretation concerning fire-fighting personnel. France stated that it would apply the provisions of the Covenant concerning the right to strike in accordance with article 6(4) of the European Social Charter.

[9] Concerning the genesis of the European Social Charter and the influence which ILO standards have had on it, see *International Labour Review*, Vol. LXXXIV, No. 5, Nov. 1961, pp. 364-365; No. 6, Dec. 1961, pp. 475-476.

[10] Inter-American Charter of Social Guarantees adopted by the Ninth International Conference of American States, Bogota, 1948. The sixth paragraph of the Preamble — a text

right to strike is also recognized in article 8(1)(b) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. [11]

National legislation and practice

144. An examination of national legislation and practice shows that the manner and extent to which the right to strike is recognized varies from country to country. Although it is enshrined in the Constitution of some countries, [12] it is most often recognized in general legislation on trade unions or collective bargaining and accompanied by a number of more or less significant restrictions, depending on the country, which may sometimes amount in practice to an actual ban. In other countries the right to strike is not expressly recognized in legislation, although immunities are provided for as regards civil liability, under certain conditions. [13]

ILO supervisory bodies

145. In the absence of an express provision on the right to strike in the basic texts, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject. These bodies are mainly the Committee on Freedom of Association within the framework of the special procedure set up to examine complaints of violations of freedom of association and the present Committee under the terms of articles 19 and 22 of the Constitution.

Committee on Freedom of Association

146. As early as its second meeting in 1952, the Committee on Freedom of Association affirmed the principle of the right to strike, stating that it is an "essential [element] of trade union rights" [14] and stressing shortly afterwards that "in most countries strikes are recognized as a legitimate weapon of trade

which dates from the same period as the international labour Conventions on freedom of association — states that it is "to the public interest, from the international point of view, to enact the most comprehensive social legislation possible, to give workers guarantees and rights on a scale not lower than that fixed in the Conventions and Recommendations of the International Labour Organization".

[11] Additional protocol of 1988, known as the "Protocol of San Salvador".

[12] For example: *Argentina, Burkina Faso, France, Portugal, Romania, Rwanda.*

[13] For example: *Ireland, United Kingdom.*

[14] Second Report, 1952, Case No. 28 (*Jamaica*), para. 68.

unions in furtherance of their members' interests".[15] Although the Committee subsequently specified the content of this right in a large number of cases, taking account of the particular circumstances brought to its attention, it has never departed from this position of principle.[16] In dealing with complaints, the Committee has considered that "... it should be guided in its task, among other things, by the provisions that have been approved by the Conference and embodied in the Conventions on freedom of association, which afford a basis for comparison when particular allegations are examined".[17] As regards more specifically the right to strike, the Committee based itself, inter alia, on the provisions of the Conventions on freedom of association.[18]

Committee of Experts

147. As early as 1959, the Committee expressed in its General Survey the view that the prohibition of strikes by workers other than public officials acting in the name of the public powers "... may sometimes constitute a considerable restriction of the potential activities of trade unions ... There is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)".[19] This position was subsequently reiterated and reinforced: "a general prohibition of strikes constitutes a considerable restriction of the opportunities opened to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities";[20] "the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers".[21] The Committee's reasoning is therefore based on the recognized right of workers' and employers' organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87).[22]

[15] Fourth Report, 1953, Case No. 5 (*India*), para. 27.

[16] *Digest*, paras. 362-363.

[17] *Digest*, p. 2.

[18] *Digest*, paras. 366, 379, 416, 438, 443.

[19] *General Survey*, 1959, para. 68.

[20] *General Survey*, 1973, para. 107.

[21] *General Survey*, 1983, paras. 200, 205.

[22] Article 3(1): "Workers' and employers' organizations shall have the right ... to organize their ... activities and to formulate their programmes";

Article 3(2): "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof";

148. The words "activities and ... programmes" in this context acquire their full meaning only when read together with Article 10, which states that in this Convention the term "organization" means any organization "for furthering and defending the interests of workers or of employers". The promotion and defence of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met. In a traditional economic relationship, one of the means of pressure available to workers is to suspend their services by temporarily withholding their labour, according to various methods, thus inflicting a cost on the employer in order to gain concessions. This economic logic cannot be applied as such to the public sector, although here again the suspension of labour services is the last resort available to workers. The Committee therefore considers that the ordinary meaning of the word "programmes" includes strike action, which led it very early on to the view that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests.

149. Under Article 3(1) of Convention No. 87, the right to organize activities and to formulate programmes is recognized for workers' and employers' *organizations*. In the view of the Committee, strike action is part of these activities under the provisions of Article 3; it is a collective right exercised, in the case of workers, by a group of persons who decide not to work in order to have their demands met. The right to strike is therefore considered as an activity of workers' organizations within the meaning of Article 3. [23]

150. As regards the practice followed in the various member States, an examination of the national legislation currently in force shows that although the conditions and restrictions of the right to strike vary enormously, the *principle* of the strike as a means of action of organizations is now widely recognized. The Committee points out in this connection that while 102 countries had ratified the Convention as of 31 December 1992, in its reports of 1992 and 1993 it made observations only on about 40 countries, and some of these referred merely to the conditions in which the right to strike is exercised: this shows that the legislation of more than 60 per cent of the countries was considered satisfactory with regard to Convention No. 87.

151. In the light of the above, the Committee confirms its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. That being said, the Committee emphasizes that the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by

Article 8(2): The law of the land, which organizations and their members must respect, must not "be such as to impair, nor shall it be applied as to impair, the guarantees provided for in this Convention".

[23] It should be noted, however, that the protection provided for in Article 1(d) of the Abolition of Forced Labour Convention, 1957 (No. 105) extends to individuals, and that the right to strike recognized by the international instruments referred to in paragraph 143 of this survey also applies to workers as individuals.

provisions laying down conditions for, or restrictions on, the exercise of this fundamental right.

General prohibition of strikes

152. A general prohibition of strikes, such as occurs in certain countries, may arise from specific provisions in the law.[24] It may also result from provisions adopted under emergency or exceptional powers, the government invoking a crisis situation to justify its intervention. Inasmuch as general prohibitions of this kind are a major restriction of one of the essential means available to workers and to their organizations for furthering and defending their interests, such measures cannot be justified except in a situation of acute national crisis and then, only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural disaster in which the normal conditions for the functioning of society are absent.

153. A less general but still very serious prohibition may also result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities,[25] disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned.[26] These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with Article 3 of Convention No. 87.

[24] For example: The Committee requested the Government of *Chad* to repeal *specifically* Ordinance No. 30 of 26 Nov. 1975, which had "suspended all strike action on the national territory" (RCE 1993, p. 181).

[25] For example: *Antigua and Barbuda*: ss. 19, 20 and 21 of the Labour Court Act of 1976. *Honduras*: s. 555(2) of the Labour Code. *Kuwait*: s. 88 of the Labour Code. *Malta*: ss. 27 and 34 of the Industrial Relations Act of 1976. *Trinidad and Tobago*: s. 65 of the Industrial Relations Act, as amended in 1978.

[26] For example: *Bolivia*: s. 113(c) of the General Labour Act of 1939. *Colombia*: ss. 448(3) and (4) and 450(1)(g) of the Labour Code. *Côte d'Ivoire*: s. 183 of the Labour Code. *Dominica*: s. 59(1) of Industrial Relations Act No. 18 of 1986, as amended. *Guyana*: s. 3 of the Law on arbitration in public utilities and the public health services. *Nigeria*: Industrial Disputes Decree No. 7 of 1976. *Philippines*: s. 263(g) and (i) of the Labour Code. *Senegal*: ss. 238-245 of the Labour Code. *Swaziland*: s. 63(1) of the Industrial Relations Act of 1980.

Specific restrictions

154. In some countries legislation, while admitting the principle of the right to strike, imposes a number of restrictions on the exercise of this right; such restrictions vary in extent, and most often concern certain categories of workers because of their status (public service), the functions they perform (essential services, role in the industrial relations system), their hierarchical rank (managerial staff) or any combination of these. [27] Other restrictions also relate to strike objectives or methods, or the obligation to give advance notice (clauses imposing a waiting period).

155. The legislative restrictions imposed on the public service and essential services are often very similar or even identical, since work in essential services is often carried out by public officials or employees with a related status. The Committee considers that the essential criterion is not so much the public or private nature of the functions concerned as the nature of the tasks carried out. However, the distinction may be useful here since, while it is easy to imagine situations in which workers in the private or semi-private sectors perform duties which undeniably come under the heading of essential services (for security reasons, for example), there are very broad categories of other workers who, despite the fact that they belong to the public service, cannot be assimilated to groups for which the prohibition or restriction of the right to strike would be justified.

Restrictions relating to the public service

156. Convention No. 87 guarantees the right to organize to workers in the public service. However, their corollary right to strike may be either limited or prohibited if they are governed by restrictive provisions, such as those referred to in paragraph 151 above. National legislation varies widely in this respect: at one end, there are systems which specifically recognize it [28] and at the other end, there are those that specifically prohibit it. [29] In some countries there are no laws or regulations on the subject, which can give rise to radically different interpretations by the public authorities: tacit prohibition or recognition. Furthermore, public servants are sometimes governed by entirely separate legislation which defines, in particular, the conditions for their right to strike, [30] whereas other countries make no distinction between the private and public

[27] In its General Survey of 1959, the Committee had already commented on this point, in particular as regards the restrictions applicable to the public service and essential services (para. 68).

[28] For example: *Côte d'Ivoire, Fiji, France, Gabon, Poland, Spain.*

[29] For example: *Bolivia, Republic of Korea.*

[30] For example: *Central African Republic, Guatemala, Italy, Lesotho, Luxembourg, Portugal.*

sectors, so that workers in the latter must observe the procedures laid down in the general legislation in order to strike. [31]

157. Even when the right to strike is recognized in the public service, this does not mean that all public servants enjoy unlimited freedom in this respect. In most countries law and practice establish various restrictions and conditions, which are generally based on such criteria as the hierarchical rank or level of responsibility of the employees concerned, the nature of the services they perform, the conditions to be observed where a strike is called and held, and even the parties' choice of the machinery for settling disputes. [32]

158. In the view of the Committee, a too broad definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers. One of the main difficulties is due to the fact that the concept itself varies considerably from one legal system to another. For example, the terms "civil servant", "fonctionnaire" and "funcionario" are far from having the same coverage; furthermore, an identical term used in the same language does not always mean the same thing in different countries; lastly, some systems classify public servants in different categories, with different status, obligations and rights, [33] while such distinctions do not exist in other systems or do not have the same consequences. Although the Committee cannot overlook the special characteristics and legal and social traditions of each country, it must, however, endeavour to establish fairly uniform criteria in order to examine the compatibility of legislation with the provisions of Convention No. 87. It would be futile to try to draw up an exhaustive and universally applicable list of categories of public servants who should enjoy the right to strike or be denied such a right. As it has already noted, [34] the Committee considers that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. The Committee is aware of the fact that except for the groups falling clearly into one category or another, the matter will frequently be one of degree. In borderline cases, one solution might be not to impose a total prohibition of strikes, but rather to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a *total and prolonged* stoppage might result in *serious* consequences for the public.

Restrictions relating to essential services

159. Numerous countries have provisions prohibiting or limiting strikes in essential services, a concept which varies from one national legislation to

[31] For example: *Algeria, Australia, Egypt, Hungary, Iceland, India, Mauritania, Sweden.*

[32] For example: *Canada*: Public Service Staff Relations Act: the choice, which can be reviewed periodically by workers, between two procedures, one of which excludes strike action.

[33] For example: *Germany*: Beamte, Arbeitnehmer (Angestellte, Arbeiter). *Turkey*: manual workers, office employees.

[34] *General Surveys*: 1959, para. 68; 1973, para. 109; 1983, para. 214.

another. They may range from merely a relatively short limitative enumeration [35] to a long list which is included in the law itself. [36] Sometimes the law includes definitions, from the most restrictive to the most general kind, covering all activities which the government may consider appropriate to include or all strikes which it deems detrimental to public order, the general interest or economic development. [37] In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. [38] The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. [39] Furthermore, it is of the opinion that it would not be desirable — or even possible — to attempt to draw up a complete and fixed list of services which can be considered as essential.

160. While recalling the paramount importance which it attaches to the universal nature of standards, the Committee considers that account must be taken of the special circumstances existing in the various member States, since the interruption of certain services which in some countries might at worst cause economic hardship could prove disastrous in other countries and rapidly lead to conditions which might endanger the life, personal safety or health of the population. A strike in the port or maritime transport services, for example, might more rapidly cause serious disruptions for an island which is heavily dependent on such services to provide basic supplies to its population than it would for a country on a continent. Furthermore, a non-essential service in the

[35] For example: *Algeria, Dominican Republic, Haiti, Hungary, Lesotho.*

[36] For example: *Bolivia*: Supreme Decree No. 1598 of 1950. *Colombia*: ss. 430 and 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967. *Ecuador*: s. 503 of Act No. 133 to reform the Labour Code. *Ethiopia*: s. 136(2) of Proclamation No. 42/1993 respecting labour. *Greece*: s. 4 of Act No. 1915 of 1990. *Mali*: Decree No. 90-562/P-RM of 22 Dec. 1990. *Swaziland*: s. 65(6) of the Industrial Relations Act of 1980.

[37] For example: *Côte d'Ivoire*: s. 183 of the Labour Code. *Dominica*: s. 59(1)(b) of Industrial Relations Act No. 18 of 1986, as amended. *Trinidad and Tobago*: s. 65 of the Industrial Relations Act. *Tunisia*: s. 384 of the Labour Code.

[38] For example: *Guatemala*: s. 243 of the Labour Code. *Pakistan*: s. 33(1) of the Industrial Relations Ordinance of 1969. *Philippines*: s. 263(g) and (i) of the Labour Code. *Romania*: ss. 38-43 of Act No. 15 of 1991 respecting the settlement of industrial disputes.

[39] *General Survey*, 1983, paras. 213-214. See also the observation of the Committee on this point concerning *Ecuador* (RCE 1993, p. 193). As regards *Lesotho*, the Committee has noted with satisfaction that s. 232(1) of the 1992 Labour Code defines essential services as indicated above (RCE 1993, p. 206).

strict sense of the term may become essential if the strike affecting it exceeds a certain duration or extent so that the life, personal safety or health of the population are endangered (for example, in household refuse collection services). In order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility ("services d'utilité publique") rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term.

Negotiated minimum service

161. In the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a *minimum* service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions.

Essential services and minimum service

162. Because of the diversity of terms used in national legislation and texts on the subject, some confusion has sometimes arisen between the concepts of minimum service and essential services: they must therefore be defined very clearly. When the Committee uses the expression "essential services" in this survey or in its reports, it refers only to essential services in the strict sense of the term, i.e. those mentioned above in paragraph 159, in which restrictions or even a prohibition may be justified, accompanied however by compensatory guarantees. The minimum service suggested in paragraph 161 above as a possible alternative to a total prohibition would be appropriate in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic

needs are met or that facilities operate safely or without interruption. [40] Indeed, nothing prevents authorities, if they consider that such a solution is more appropriate to national conditions, from establishing only a minimum service in sectors considered as "essential" by the supervisory bodies according to the criteria set forth above, which would justify wider restrictions to, or even a prohibition of strikes.

Requisitioning

163. Under the legislation of some countries, workers on strike can be requisitioned. Since the requisitioning of workers could be abused as a means of settling labour disputes, such action is to be avoided except where, in particularly serious circumstances, essential services have to be maintained. Requisitioning may be justified by the need to ensure the operation of essential services in the strict sense of the term.

Compensatory guarantees

164. If the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be reliable by the parties concerned. It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity; arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions relating to the objectives of a strike

Political strikes/protest strikes

165. The Committee has always considered that strikes that are purely political in character do not fall within the scope of freedom of association. [41] However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers; this is the case, for example, of a general price and

[40] For example, in the iron and steel industry, the continuous operation of blast furnaces. See also CFA, 273rd Report, Case No. 1521, para. 39 (*Turkey*); 268th Report, Case No. 1486, para. 187 (*Portugal*).

[41] *General Surveys*, 1959, para. 69; 1973, para. 113; 1983, para. 216.

wage freeze. In the legislation of many countries political strikes are explicitly or tacitly deemed unlawful. Elsewhere, restrictions on the right to strike may be interpreted so widely that any strike might be considered as political. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living. [42]

Strikes, collective bargaining and "social peace"

166. The legislation in many countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law must be observed. Other industrial relations systems are based on a radically different philosophy in which collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited under the law itself, with workers and employers being afforded arbitration machinery in exchange. Recourse to strike action is generally possible under these systems only as a means of pressure for the adoption of an initial agreement or its renewal. The Committee considers that both these options are compatible with the Convention and that the choice should be left to the law and practice of each State. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements (for instance the impact of a wage control policy imposed by the Government on monetary clauses in the agreement).

167. If legislation prohibits strikes during the term of collective agreements, this major restriction on a basic right of workers' organizations must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements. Such a procedure not only allows the inevitable difficulties of application and interpretation to be settled during the term of an agreement, but has the advantage of clearing the ground for subsequent bargaining rounds by identifying the problems which have arisen during the term of the agreement.

[42] See also Ch. IV, paras. 130-133.

Sympathy strikes

168. Sympathy strikes, which are recognized as lawful in some countries, are becoming increasingly frequent because of the move towards the concentration of enterprises, the globalization of the economy and the delocalization of work centres. While pointing out that a number of distinctions need to be drawn here (such as an exact definition of the concept of a sympathy strike; a relationship justifying recourse to this type of strike, etc.), the Committee considers that a *general* prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful.

Export processing zones

169. In an increasing number of countries, legislation establishes a special system of industrial relations in free zones, which are sometimes called export processing zones or industrial zones.[43] In its General Report of 1993[44] the Committee referred to this problem, which is not unrelated to the growing phenomenon of the delocalization of enterprises. Amongst other provisions establishing exceptions from the general system of industrial relations, some of this legislation specifically or indirectly prohibits strikes: such a prohibition is incompatible with the provisions of the Convention, which provide that all workers, *without distinction whatsoever*, shall have the right to establish organizations of their own choosing and that such organizations shall have the right to organize their activities and to formulate their programmes.[45]

Other prerequisites

Requirement of a strike ballot

170. In many countries legislation subordinates the exercise of the right to strike to prior approval by a certain percentage of workers. Although this requirement does not, in principle, raise problems of compatibility with the Convention, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. The conditions established in the legislation of different

[43] For example: *Bangladesh*, Export Processing Zones Authority Act of 1980. *Pakistan*: Export Processing Zone Authority Ordinance of 1980 and Export Processing Zone (Control of Employment) Rules of 1982. *Togo*: no provisions regulating industrial relations in export processing zones.

[44] RCE 1993, paras. 58-61. See also Ch. III, para. 60.

[45] See also CFA, 241st Report, Case No. 1323 (*Philippines*), para. 371; 253rd Report, Case No. 1383 (*Pakistan*), para. 98.

countries vary considerably and their compatibility with the Convention may also depend on factual elements such as the scattering or geographical isolation of work centres or the structure of collective bargaining (by enterprise or industry), all of which require an examination on a case by case basis. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.

Exhaustion of conciliation/mediation procedures

171. In a large number of countries legislation stipulates that the conciliation and mediation procedures must be exhausted before a strike may be called.[46] The spirit of these provisions is compatible with Article 4 of Convention No. 98, which encourages the full development and utilization of machinery for the voluntary negotiation of collective agreements.[47] Such machinery must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.[48]

Waiting period, advance notice

172. In a large number of countries the law requires workers and their organizations to give notice of their intention to strike[49] or gives the authorities the power to impose an additional cooling-off period.[50] In so far as they are conceived as an additional stage in the bargaining process and designed to encourage the parties to engage in final negotiations before resorting to strike action — preferably with the assistance of a conciliator or a special mediator — such provisions may be seen as measures taken to encourage and promote the development of voluntary collective bargaining as provided for in Article 4 of Convention No. 98. Again, however, the period of advance notice should not be an additional obstacle to bargaining, with workers in practice simply waiting for its expiry in order to be able to exercise their right to strike. The period of advance notice should be shorter if the mediation or conciliation procedure itself

[46] For example: *Bahamas, Bulgaria, Cameroon, Madagascar, Morocco, Poland, Thailand, Venezuela, Zambia.*

[47] When conciliation and arbitration are voluntary, account should be taken of Para. 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92): "No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."

[48] See, for example, as regards administrative obstacles and practical difficulties for the lawful initiation of a strike, CFA, 279th Report, Case No. 1566 (*Peru*), para. 89.

[49] For example: *Algeria, Central African Republic, Djibouti, Guinea, Poland.* In some countries, for example *France*, legislation makes advance notice obligatory only in the public sector, while parties in the private sector are allowed to negotiate this point.

[50] An identical period of advance notice is generally required for lockouts.

is already lengthy and has enabled the remaining matters in dispute to be clearly identified.

Forms of strike action

173. When the right to strike is guaranteed by national legislation, a question that frequently arises is whether the action undertaken by workers constitutes a strike under the law. Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralyzing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.

The course of the strike

Picketing/occupation of the workplace

174. Strike picketing aims at ensuring the success of the strike by persuading as many persons as possible to stay away from work. The ordinary or specialized courts are generally responsible for resolving problems which may arise in this respect. National practice is perhaps more important here than on any other subject: while in some countries strike pickets are merely a means of information, ruling out any possibility of preventing non-strikers from entering the workplace, in other countries they may be regarded as a form of the right to strike, and the occupation of the workplace as its natural extension, aspects which are rarely questioned in practice, except in extreme cases of violence against persons or damage to property. The Committee considers in this respect that restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful.

Replacement of strikers

175. A special problem arises when legislation or practice allows enterprises to recruit workers to replace their own employees on *legal* strike. The difficulty is even more serious if, under legislative provisions or case-law, strikers do not, as of right, find their job waiting for them at the end of the dispute.[51] The Committee considers that this type of provision or practice

[51] CFA, 278th Report, Case No. 1543 (*United States*), para. 93; the case-law makes a distinction between "unfair labour practice" strikes and "economic" strikes. See also para. 139 as regards the maintaining of the employment relationship.

seriously impairs the right to strike and affects the free exercise of trade union rights. [52]

Sanctions against strikes

176. Most legislation restricting or prohibiting the right to strike also contains clauses providing for sanctions against workers and trade unions that infringe these provisions. In some countries, striking illegally is a penal offence punishable by a fine or term of imprisonment. [53] Elsewhere, engaging in an unlawful strike may be considered as an unfair labour practice and entail civil liability and disciplinary sanctions.

177. The Committee considers that sanctions for strike action should be possible *only* where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labour relations and the existence of heavy sanctions for strike action may well create more problems than they resolve. Since the application of disproportionate penal sanctions does not favour the development of harmonious and stable industrial relations, if measures of imprisonment are to be imposed at all they should be justified by the seriousness of the offences committed. In any case, a right of appeal should exist in this respect.

178. In addition, certain prohibitions of, or restrictions to, the right to strike which are in conformity with the principles of freedom of association sometimes provide for civil or penal sanctions against strikers and trade unions which violate these provisions. In the view of the Committee, such sanctions should not be disproportionate to the seriousness of the violations.

* * *

179. *In the view of the Committee, the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87. This right is not, however, absolute and may be restricted in exceptional circumstances or even prohibited for certain categories of workers, in particular certain public servants or for essential services in the strict sense of the term, on condition that compensatory guarantees are provided for. A negotiated minimum service might be established in other services which are of public utility ("services d'utilité publique") where a total prohibition of strike action cannot be justified. Provisions which, for instance, require the parties to exhaust mediation or*

[52] Some countries have adopted legislation which prohibits employers from hiring outside workers to ensure continuation of production or services, for example: *Bulgaria*; *Canada* (*Quebec, Ontario, British Columbia*) with some exceptions made for managerial staff; *Greece*; *Turkey*.

[53] For example: *Ecuador* (RCE 1992, p. 330); *Philippines* (RCE 1993, p. 302); *Sudan* (RCE 1993, p. 304); *Syrian Arab Republic* (RCE 1993, p. 305); *Thailand* (RCE 1992, p. 356). By contrast, the Committee recently noted with satisfaction the repeal of such provisions in *Costa Rica* (RCE, 1994 observation on C.87).

conciliation procedures or workers' organizations to observe certain procedural rules before launching a strike are admissible, provided that they do not make the exercise of the right to strike impossible or very difficult in practice, which would result in a very wide restriction of this right in fact. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its exercise should not result in workers being dismissed or discriminated against.

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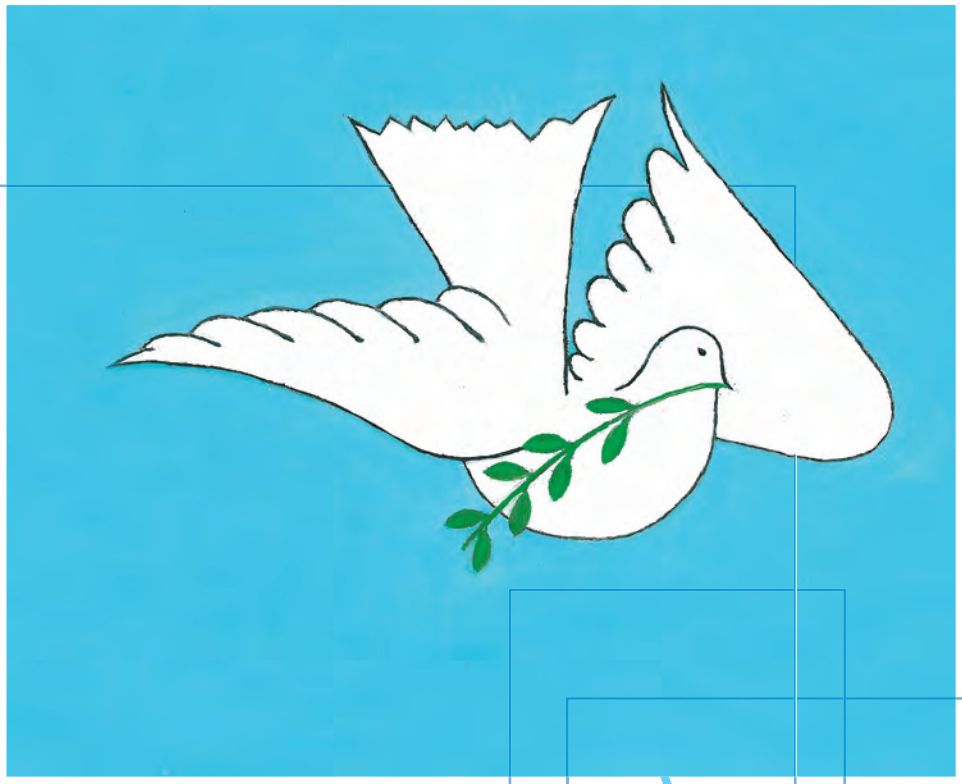
International Labour Office

Geneva

101st Session of the International Labour Conference

Building a future with decent work



Giving globalization a human face

INTERNATIONAL LABOUR CONFERENCE
101st SESSION, 2012

International Labour Conference, 101st Session, 2012

General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008

Third item on the agenda:
Information and reports on the application of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)

Report III (Part 1B)

International Labour Office Geneva

establishing the possibility for the governor to appoint an observer to the general congress of a trade union.

116. With regard to the political activities of organizations, ***the Committee is of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties, and those which prohibit all political activities by trade unions, give rise to difficulties with regard to the principles of the Convention***. Noting that the existence of a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country, [258] the Committee considers that some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interests of organizations in expressing their point of view on matters of economic or social policy affecting their members or workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other. [259]

The right to strike

Introduction

117. ***Strikes are essential means available to workers and their organizations to protect their interests***, but there is a variety of opinions in relation to the right to strike. While it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers' organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties. In the absence of an express provision in Convention No. 87, it was mainly on the basis of *Article 3* of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and *Article 10*, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed (as was the case for other provisions of the Convention) by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association). This position of the supervisory bodies in favour of the recognition and protection of the right to strike has, however, been subject to a number of criticisms from the Employers' group in the Committee on the Application of Standards of the International Labour Conference.

[258] Resolution concerning the independence of the trade union movement, 1952 (Preamble).

[259] General survey, 1994, paras 130–133.

Employers' group

The Employers' group in the Conference Committee considers that neither the preparatory work for Convention No. 87, nor an interpretation based on the Vienna Convention on the Law of Treaties, offers a basis for developing, starting from the Convention, principles regulating in detail the right to strike. [1]

According to the Employer members, the right to strike has no legal basis in the freedom of association Conventions. In their view, Convention No. 87 at most contains a general right to strike, which nonetheless cannot be regulated in detail under the Convention. They consider that when the Committee of Experts expresses its views in detail on strike policies, especially on essential services, it applies a "one-size-fits-all" approach that fails to recognize differences in economic or industrial development and current economic circumstances. They add that the approach of the Committee of Experts undermines tripartism and ask it to reconsider its interpretation of the matter. [2] In 2011, the Employer members reiterated their position, considering that the observations of the Committee of Experts on the right to strike and essential services are not in conformity with the text, the preparatory work and the history of the negotiation of Convention No. 87. [3]

In its communication dated 7 July 2011, the International Organisation of Employers (IOE) recalls and develops in detail the long-held views of the Employers' group in relation to the right to strike as set out in the Conference Committee *Record of Proceedings*, particularly those related to the 81st Session of the International Labour Conference (1994) when the last General Survey on freedom of association and collective bargaining was discussed.

[1] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 57. [2] ibid. [3] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, 100th Session, Geneva, June 2011, Part I, General Report, para. 55. Moreover, during the discussion of the 1994 General Survey, the Employer members indicated that "strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the Survey placed a great deal of emphasis […] on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner. […] The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that "[…] during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted". The Employer members however quoted the following passage: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". (31st Conference, 1948, Report VII, p. 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles". (31st Conference, 1948, *Record of Proceedings*, Appendix X, p. 477). Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Worker spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion: he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pp. 468 and 470; see also ILO: *Industry and Labour*, Vol. II, July–December 1949, pp. 147, and following.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons. […] Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, paras 117–119, pp. 25/32 and 33).

Workers' group

The Worker members of the Conference Committee contest the position of the Employer members and consider that, although the right to strike is not explicitly mentioned in the Convention, that does not prevent its existence being recognized, particularly on the basis of several international instruments. [1]

In the discussion of the 1994 General Survey, they stated that the right to strike is an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO Constitution. In their view, without the right to strike, freedom of association would be deprived of its substance. They added that strike objectives could not be limited only to the conflicts linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level. Finally, they considered that by considerably limiting the scope of action of trade unions, by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions. [2]

According to the Worker members, possible restrictions on the right to strike in essential services and for certain categories of public servants should be restrictively defined given that they are exceptions to a general rule concerning a fundamental right. They added that the Committee of Experts unanimously, all the Worker members and a large majority of the Government members are of the opinion that effective protection of freedom of association necessarily implies operational rules and principles concerning the modalities of strike action. Finally, they indicated that the Committee of Experts had developed its views on this question in a very cautious, gradual and balanced manner, and that it would be preferable that the general consensus established in this regard was not shaken up. [3]

[1] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 74. [2] *Record of Proceedings*, ILC, 81st Session, Geneva, 1994, 25, General Report, paras 136–143, pp. 25/38–40. [3] ibid.

118. With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties). In addition, and as seen below in response to comments made by both workers' and employers' organizations, the process of determining whether there is compliance with a general right to strike invariably involves consideration of the specific circumstances in which the Committee is called upon to determine the ambit and modalities of the right. The Committee has further borne in mind over the years the considerations set forth by the tripartite constituency and would recall in this respect that the right to strike was indeed first asserted as a basic principle of freedom of association by the tripartite Committee on Freedom of Association in 1952 and has been recognized and developed in scores of its decisions over more than a half century. Moreover, the 1959 General Survey, in which the Committee first raised its consideration in respect of the right to strike in relation to the Convention, was fully discussed by the Conference Committee on the Application of Standards without objection from any of the constituents.

119. The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice. For all of these reasons, and in light of the fact that the Committee of Experts has never considered the right to strike to be an absolute and unlimited right, [260] and that it has sought to establish limits to the right to strike in order to be able to determine any cases of abuse and the sanctions that may be imposed. The view taken concerning the right to strike and the principles developed over time on a tripartite basis, as in many other fields, should give rise to little controversy. The Committee further observes that employers' organizations also sometimes invoke the principles developed by the supervisory bodies concerning strikes and very tangible related matters, particularly with regard to the freedom to work of non-strikers, the non-payment of strike days, access of the management to enterprise installations in the event of a strike, the imposition of compulsory arbitration by unilateral decision of trade unions and protest action by employers against economic and social policy.

120. The affirmation of the right to strike by the supervisory bodies lies within the broader framework of the recognition of this right at the international level, particularly in the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8, paragraph 1(d)), [261] which, to date, has been ratified by 160 countries, most of which are ILO members, as well as in a number of regional instruments, as indicated in paragraph 35 of the present Survey. It is in the context of the Council of Europe that the protection of the right to strike is the most fully developed at the regional level, in light of the abundant case law of the European Committee of Social Rights, the supervisory body for the application of the European Social Charter adopted in 1961 and revised in 1996, which sets out this right.

121. Other ILO instruments also refer to the right to strike, and principally the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes, and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which indicates that the parties should be encouraged to abstain from strikes and lockouts in the event of voluntary conciliation and arbitration, and that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. Certain resolutions also make reference to this right. [262]

122. Each year, the Committee examines many individual cases relating to national provisions regulating strikes, most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts. Over the years, the supervisory bodies have specified a

[260] During the discussion of the 1994 General Survey, the Employer members felt it important to note "that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, Part I, General Report, para. 121, p. 25/33).

[261] The Committee on Economic, Social and Cultural Rights recommends States parties to take the necessary measures with a view to ensuring the full exercise of the right to strike, or relaxing the limitations imposed on this right.

[262] See, in particular, the resolution adopted in 1970 by the ILC concerning trade union rights and their relation to civil liberties.

series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows: (i) the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations); (ii) as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise; (iii) the objectives of strikes must be to further and defend the economic and social interests of workers and; (iv) the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination. Accordingly, subject to the restrictions authorized, a general prohibition of strikes is incompatible with the Convention, although the supervisory bodies accept the prohibition of wildcat strikes. Furthermore, strikes are often called by federations and confederations which, in the view of the Committee, should be recognized as having the right to strike. Consequently, legislation which denies them this right is incompatible with the Convention. [263]

Recognition at the national level

123. Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level. [264] The Committee has noted with satisfaction, for example, in relation to the African continent, the recent repeal of provisions prohibiting the right to strike in *Liberia*, [265] and the repeal of significant restrictions on the right to strike which remained in the *United Republic of Tanzania*. [266] It has also noted with satisfaction the definition of strikes set out in the new Labour Code of *Burkina Faso*, [267] under the terms of which a strike is understood as being a concerted and collective cessation of work with a view to supporting occupational demands and ensuring the defence of the material and moral interests of workers.

Modalities

124. In the legislation of several countries, "political strikes" are explicitly or tacitly deemed unlawful. [268] The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore

[263] See, for example, *Colombia* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; and *Panama* – CEACR, observation, 2011.

[264] See, for example, *Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina,* Brazil, *Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea,* Guinea-Bissau, *Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan,* Kenya, Republic of Korea, *Kyrgyzstan, Latvia, Lithuania, Luxembourg, The former Yugoslav Republic of Macedonia, Madagascar, Republic of the Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro,* Morocco, *Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine,* United States, *Uruguay* and *Bolivarian Republic of Venezuela.*

[265] *Liberia* – CEACR, observation, 2009.

[266] *United Republic of Tanzania* – CEACR, observation, 2005.

[267] *Burkina Faso* – CEACR, observation, 2010.

[268] See, for example, *Gabon* – CEACR, direct request, 2004; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. [269] Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, [270] including in cases when such organizations have recourse to strikes.

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful. [271] It has noted in particular the recognition in *Croatia* [272] of the right to call sympathy strikes in national legislation and the recognition of this right for public servants in the current collective agreement. It has also noted with interest the repeal from the Constitution of *Turkey* [273] of the provision which prohibited "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

126. Finally, ***in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful***. [274] "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions. [275]

Permitted restrictions and compensatory guarantees

127. The right to strike is not absolute and may be restricted in exceptional circumstances, or even prohibited. Over and above the armed forces and the police, the members of which may be excluded from the scope of the Convention in general, other restrictions on the right to strike may relate to: (i) certain categories of public servants; (ii) essential services in the strict sense of the term; and (iii) situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to

[269] The Committee on Freedom of Association has considered, in the particular case of a complaint presented by employers, that employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies (Case No. 2530 *(Uruguay)*, Report No. 348, para. 1190).

[270] See, for example, *Swaziland* – CEACR, observation, 2011.

[271] In its report under art. 19 of the Constitution, the Government of New Zealand indicates that the reason for which it has not ratified Convention No. 87 is related to the fact that "ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty".

[272] *Croatia* – CEACR, observations, 1999 and 2004.

[273] *Turkey* – CEACR, observation, 2011.

[274] General Survey, 1994, para. 173.

[275] See, for example, *Pakistan* – CEACR, observation, 2010 (a work slowdown is considered an unfair labour practice).

meet the requirements of the situation. In these cases, compensatory guarantees should be provided for the workers who are thus deprived of the right to strike.

128. In this context, the Committee has noted with concern the potential impact of the recent case law of the Court of Justice of the European Communities (CJEC) concerning the exercise of the right to strike, and particularly the fact that in recent rulings the Court has found that the right to strike could be subject to restrictions where its effects may disproportionately impede an employer's freedom of establishment or freedom to provide services. [276] In a communication dated 29 August 2011, the European Trade Union Confederation (ETUC) drew the Committee's attention to its particular concerns with respect to the impact of recent decisions of the Court of Justice of the European Union (*Viking*, *Laval*, *Ruffert* and *Luxembourg*) on freedom of association rights and the effective recognition of collective bargaining. While the ETUC has asked the Committee to determine whether these decisions are compatible with Conventions Nos 87 and 98, the Committee recalls, as it had when examining similar matters with respect to the *United Kingdom*, that its mandate is limited to reviewing the application of Conventions in a given member State. The Committee nevertheless takes note with interest of recent initiatives of the European Commission to clarify the import of these judgments and looks forward to learning of the progress made in this regard.

Public service

129. Taking into account the importance of ensuring the continuity of the functions of the three branches of the State (the legislative, executive and judicial authorities) and of essential services, ***the Committee of Experts and the Committee on Freedom of Association consider that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State"***. [277] Decisions implementing this principle at the national level vary. For example, in *Switzerland*, [278] although previously all federal officials were denied the right to strike, an ordinance now limits this prohibition to officials exercising authority in the name of the State.

130. Several States prohibit or impose restrictions on the right to strike in the public service which go beyond the framework established by the Committee. [279] These restrictions relate in particular to teachers. Nevertheless, the Committee considers that public sector teachers are not included in the category of public servants "exercising authority in the name of the State" and that they should therefore benefit from the right to strike without being liable to sanctions, even though, under certain circumstances, the

[276] *United Kingdom* – CEACR, observations, 2010 and 2011. CJEC, 11 December 2007, *International Transport Workers' Federation and Finnish Seaman's Union* v. *Viking Line ABP*, Case C-438/05, and CJEC, 19 December 2007, *Laval un Partneri* v. *Svenska Byggnadsarbetareforbundet*, Case C-341/05.

[277] See *Digest of decisions and principles of the Freedom of Association Committee*, 2006, para. 541, and General Survey, 1994, paras 158 et seq. For an example of the definition of the category of workers "exercising authority in the name of the State", see, *Denmark* – CEACR, direct request, 2010. See, for example, as regards the prohibition of the right to strike of customs officers, Committee on Freedom of Association, Case No. 2288 *(Niger)*, Report No. 333.

[278] *Switzerland* – CEACR, direct request, 2011.

[279] See, for example, *Albania* – CEACR, observation, 2010; *Bulgaria* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2010; *Estonia* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010 (in its report under art. 19 of the Constitution, the Government of *Japan* indicates that it is currently examining the issue of whether the right to strike should be granted in the public sector); *Kazakhstan* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

maintenance of a minimum service may be envisaged in this sector. [280] This principle should also apply to postal workers and railway employees, [281] as well as to civilian personnel in military institutions when they are not engaged in the provision of essential services in the strict sense of the term. [282]

Essential services

131. ***The second acceptable restriction on strikes concerns essential services.*** The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those "the interruption of which would endanger the life, personal safety or health of the whole of part of the population". [283] This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation fairly frequently has recourse to the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list which is included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as *Bulgaria*, [284] the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly, [285] or leave too much discretion to the authorities to unilaterally declare a service essential; [286] others allow strikes to be prohibited on the basis of their potential economic consequences [287] (particularly in EPZs and recently established enterprises), [288] or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest. [289] Such provisions are not compatible with the principles relating to the right to strike.

133. In still other countries, such as *Colombia*, [290] it is left to the higher judicial authorities to determine, on a case-by-case basis, the essential nature of a service, even where there is a general definition in law in this respect. Finally, in other cases, the

[280] See, for example, *Germany* – CEACR, observation, 2010.

[281] ibid.

[282] See, for example, *Angola* – CEACR, direct request, 2010.

[283] General Survey, 1994, para. 159.

[284] *Bulgaria* – CEACR, observation, 2008 (removal of the prohibition of strikes in the energy, communications and health sectors).

[285] See, for example, *Chile* – CEACR, observation, 2010.

[286] See, for example, *Zimbabwe* – CEACR, observation, 2011.

[287] See, for example, *Australia* – CEACR, observation, 2010; *Benin* – CEACR, observation, 2001; and *Chile* – CEACR, observation, 2010.

[288] See, for example, *Bangladesh* – CEACR, observation, 2010 (prohibition of strikes for three years from the date of commencement of production in a new establishment); and *Panama* – CEACR, observation, 2011 (denial of the right to strike in enterprises less than two years old).

[289] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2001; and *Zambia* – CEACR, observation, 2011.

[290] *Colombia* – CEACR, observation, 2010 (ruling on appeal for cassation of the Labour Chamber of the Supreme Court of Justice of 3 June 2009 (Case No. 40428)).

determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners, such as in *Cyprus*. [291] In this context, the Committee has noted with satisfaction several cases of interesting progress, including the repeal in *Guatemala* [292] of the prohibition of strikes or the suspension of work by workers in enterprises or services the interruption of which would, in the opinion of the Government, seriously affect the national economy; the removal in *Turkey* [293] of the imposition of compulsory arbitration to prevent a strike in EPZs and; the repeal in *Cyprus* [294] of provisions granting the Council of Ministers discretionary power to prohibit strikes in the services that it considers essential.

Activities not considered as essential services

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector, [295] railways, [296] transport services and public transport, [297] air transport services and civil aviation, [298] teachers and the public education service, [299] the agricultural sector, [300] fuel distribution services [301] and the hydrocarbon, natural gas and petrochemical sector, [302] coal production, [303] maintenance of ports and airports, [304] port services and authorities [305]

[291] *Cyprus* – CEACR, observation, 2006.

[292] *Guatemala* – CEACR, observation, 2002.

[293] *Turkey* – CEACR, observation, 2005.

[294] *Cyprus* – CEACR, observation, 2008.

[295] See, for example, *Botswana* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[296] See, for example, *Azerbaijan* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[297] See, for example, *Azerbaijan* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; *Guinea* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Jersey)* – CEACR, observation, 2011.

[298] See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2011.

[299] See, for example, *Canada* – CEACR, observation, 2010 (British Colombia and Manitoba); *Germany* CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[300] See, for example, *Chile* – CEACR, observation, 2010.

[301] See, for example, *Ecuador* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; and *Mozambique* – CEACR, observation, 2011.

[302] See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2010.

[303] See, for example, *Turkey* – CEACR, observation, 2010.

[304] See, for example, *Nigeria* – CEACR, observation, 2011.

and loading and unloading services for ships, [306] postal services, [307] municipal services, [308] services for the loading and unloading of animals [309] and of perishable foodstuffs, [310] EPZs, [311] government printing services, [312] road cleaning and refuse collection, [313] radio and television, [314] hotel services [315] and construction. [316]

Activities considered as essential services

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services, [317] telephone services [318] and the services responsible for dealing with the consequences of natural disasters, as well as firefighting services, health and ambulance services, prison services, the security forces and water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

Negotiated minimum service

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an

[305] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Dominica* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Guyana* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010.

[306] See, for example, *Costa Rica* – CEACR, observation, 2010; *Grenada* – CEACR, direct request, 2010; and *Guyana* – CEACR, observation, 2011.

[307] See, for example, *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; and *Russian Federation* – CEACR, observation, 2011.

[308] See, for example, *Russian Federation* – CEACR, observation, 2011.

[309] See, for example, *Mozambique* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

[310] See, for example, *Dominica* – CEACR, observation, 2010; and *Mozambique* – CEACR, observation, 2011.

[311] See, for example, *Mozambique* – CEACR, observation, 2011.

[312] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; and *Nigeria* – CEACR, observation, 2011.

[313] See, for example, *Nigeria* – CEACR, observation, 2011.

[314] See, for example, Committee on Freedom of Association, Case No. 1884 *(Swaziland)*, Report No. 306.

[315] See, for example, Committee on Freedom of Association, Case No. 2120 (Nepal), Report No. 328.

[316] See, for example, Committee on Freedom of Association, Case No. 2326 (Australia), Report No. 338.

[317] See, for example, *Nigeria* – CEACR, observation, 2010.

[318] See, for example, *Kyrgyzstan* – CEACR, direct request, 2011.

acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. [319] Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. [320] Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries, [321] but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice, the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike. [322] Others authorize the public authorities to determine minimum services at their discretion, without consultation, [323] or require the judicial authorities to issue an order for this purpose. [324]

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in *Argentina*; [325] the amendment of the Law on Strikes in *Montenegro*, [326] which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in *Guatemala* [327] of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in *Peru* [328] that in the case of disagreement on the number and occupation of the

[319] General Survey, 1994, para. 161.

[320] See, for example, *Republic of Moldova* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

[321] See, for example, *Cambodia* – CEACR, direct request, 2011; and *Cape Verde* – CEACR, direct request, 2011.

[322] See, for example, *Bulgaria* – CEACR, observation, 2011 (in the railways); and *Romania* – CEACR, observation, 2011 (in the field of transport).

[323] See, for example, *Armenia* – CEACR, direct request, 2011; *Chad* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[324] See, for example, *Mauritius* – CEACR, direct request, 2011.

[325] *Argentina* – CEACR, observation, 2011. In contrast, in *Mexico*, the National Banking Commission responsible for ensuring that the indispensable number of agencies remain open during a strike is not a tripartite body.

[326] *Montenegro* – CEACR, direct request, 2011.

[327] *Guatemala* – CEACR, observation, 2002.

[328] *Peru* – CEACR, direct request, 2011.

workers who are to continue working, the labour authority shall designate an independent body for their determination.

Situations of acute national or local crisis

140. ***The third restriction on the right to strike relates to situations of acute national or local crisis.*** As general prohibitions of strikes resulting from emergency or exceptional powers constitute a major restriction on one of the essential means available to workers, the Committee considers that they are only justified in a situation of acute crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent. [329]

Compensatory guarantees for workers deprived of the right to strike

141. When the right to strike is restricted or prohibited in certain enterprises or services considered essential, or for certain public servants exercising authority in the name of the State, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated. [330] Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions on strikes during the term of a collective agreement

142. The legislation in certain countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law or by collective agreement must be observed. In other systems, collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited. The Committee considers that both these options are compatible with the Convention. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements. If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements. [331]

143. *EPZs.* A number of countries establish a special system of industrial relations in EPZs which specifically or indirectly prohibits strikes in such zones. [332] In the view of the Committee, such prohibitions are incompatible with the principles of non-discrimination which must prevail in the implementation of the Convention. It has

[329] General Survey, 1994, para. 152.

[330] *Switzerland* – CEACR, direct request, 2011.

[331] General Survey, 1994, paras 166–167.

[332] See, for example, *Pakistan* – CEACR, observation, 2011 (information provided by the International Trade Union Confederation); and *Panama* – CEACR, observation, 2011.

therefore noted with satisfaction, among other measures, the repeal in *Turkey* [333] of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes; and the repeal in *Namibia* [334] of the provision which prohibited any employee from taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal.

Prerequisites

Exhaustion of prior procedures (conciliation, mediation and voluntary arbitration)

144. A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer and/or establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called. [335] In the view of the Committee, such machinery should, however, have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness. [336] With regard to the duration of prior conciliation and arbitration procedures, the Committee has considered, for example, that the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible. In other cases, it has proposed reducing the period fixed for mediation. [337] The situation is also problematic when legislation does not set any time limit for the exhaustion of prior procedures and confers full discretion on the authorities to extend such procedures. [338]

Advance notice, cooling-off periods and the duration of strikes

145. In a large number of countries, there is a requirement to comply with a notice period or a cooling-off period before calling a strike. [339] In so far as they are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, such provisions may be seen as measures taken to encourage and promote the development of voluntary bargaining. Again, however, the period of advance notice should not be an additional obstacle to bargaining, and should be shorter if it follows a compulsory prior mediation or conciliation procedure which itself is already lengthy. For example, the Committee has considered that advance notice of 60 days is excessive. [340]

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[333] *Turkey* – CEACR, observation, 2005.

[334] *Namibia* – CEACR, observation, 2003.

[335] See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Libya* – CEACR, observation, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2010.

[336] General Survey, 1994, para. 171.

[337] *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

[338] See, for example, *Kiribati* – CEACR, observation, 2011.

[339] See, for example, *Burundi* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

[340] *United Republic of Tanzania* – CEACR, observation, 2011.

146. Finally, in certain cases, the advance notice must be accompanied by an indication of the duration of the strike, under the threat that workers may be liable to sanctions if they participate in a strike the duration of which is not specified in the notification. [341] The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish. [342]

Quorum and majority required to call a strike

147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds [343] or three-quarters [344] of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises. [345] In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. [346] For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice. [347] In this context, it has noted with satisfaction, among other measures, the legislative amendment in *Latvia* [348] which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting. Similarly, in *Guatemala*, [349] the requirement to obtain the votes of two-thirds of the members of a trade union to decide whether or not to call a strike has been removed and it is now sufficient to obtain a vote in favour of half plus one of the members constituting the quorum of the respective assembly.

Prior approval and supervision of strike ballots

148. The Committee considers that the requirement set out in law to obtain prior approval of a strike by a higher level trade union organization [350] is an impediment to the freedom of choice of the organizations concerned to organize their activities. Furthermore, it considers that the control or supervision of the strike ballot by the

[341] See, for example, *Burundi* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[342] See, for example, *Chad* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

[343] See, for example, *Armenia* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; and *Mexico* – CEACR, observation, 2011.

[344] See, for example, *Bangladesh* – CEACR, observation, 2010; and *Plurinational State of Bolivia* – CEACR, observation, 2010.

[345] See, for example, *Armenia* – CEACR, direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Mauritius* – CEACR, direct request, 2011.

[346] General Survey, 1994, para. 170.

[347] See, for example, *Czech Republic* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[348] *Latvia* – CEACR, observation, 2007.

[349] *Guatemala* – CEACR, observation, 2002.

[350] Such approval is required, for example, in *Egypt* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

administrative authority [351] constitutes an act of interference in trade union activities that is incompatible with the Convention, unless the trade unions so request, in accordance with their own rules.

The course of the strike

Picketing, occupation of the workplace, access to the enterprise and freedom of work

149. Strike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets [352] or the occupation of the workplace during a strike. [353] ***The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.***

150. Several complaints have been presented by employers' organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers' organizations and of employers and their organizations. [354] In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in *Panama*, [355] which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their

[351] Such supervision is carried out, for example, in *Angola* – CEACR, direct request, 2010; *Bahamas* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 1997; *Swaziland* – CEACR, observation, 2010; and *United Republic of Tanzania* – CEACR, observation, 2011.

[352] See, for example, *United Republic of Tanzania* – CEACR, observation, 2011.

[353] See, for example, *Burkina Faso* – CEACR, observation, 2010 (prohibition under the penalty of penal sanctions); *Côte d'Ivoire* – CEACR, direct request, 2010; *Mauritania* – CEACR, direct request, 2011 (prohibition under penalty of penal sanctions); and *Senegal* – CEACR, observation, 2011.

[354] Committee on Freedom of Association, Case No. 1931 *(Panama)*, Report No. 310, paras 497 and 502.

[355] *Panama* – CEACR, observation, 2011.

purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned).

Requisitioning of strikers and hiring of external workers

151. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike, [356] the Committee considers that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis.

152. The Committee also recalls that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common law system strikes are regarded as having the effect of terminating the employment contract, leaving employers free to replace strikers with new recruits. [357] ***The Committee considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute.*** The legislation should provide for genuine protection in this respect. [358]

Compulsory arbitration

153. Another means of denying the right to strike or seriously restricting its exercise consists of the imposition of compulsory arbitration, which makes it possible to prohibit virtually all strikes or to end them quickly. In such cases, collective labour disputes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued. The Committee considers that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only acceptable under certain circumstances, namely: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation. [359] Accordingly, the existence of protracted disputes and the failure of conciliation are not per se elements which justify the imposition of compulsory arbitration. [360] However, the Committee also recognizes that there comes a time in bargaining where, after protracted and fruitless negotiations, the public authorities might be justified to step in when it is obvious that the deadlock will not be broken without some initiative on their part. [361]

[356] See, for example, *Angola* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, observation, 2011; and *Djibouti* – CEACR, observation, 2010.

[357] *United Kingdom* – CEACR, observation, 2011.

[358] General Survey, 1994, para. 139.

[359] General Survey, 1994, para. 257.

[360] *Kiribati* – CEACR, observation, 2011.

[361] General Survey, 1994, para. 258.

154. In practice, several countries continue to authorize recourse to compulsory arbitration, either automatically, or at the discretion of the public authorities, [362] or at the request of one of the parties (sometimes following the exhaustion of compulsory prior conciliation and mediation procedures). [363] ***In the view of the Committee, systematic recourse to this type of procedure is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention.*** Moreover, arbitration imposed by the authorities at the request of only one of the parties is, in general, contrary to the principles of collective bargaining. Nevertheless, many countries continue to authorize recourse to compulsory arbitration in situations which go beyond the framework established by the Committee, [364] particularly in cases in which disputes continue for more than a certain period. [365]

155. Other countries provide that when the conciliation attempt between the parties to the dispute has not been successful, the dispute may be referred to a specific body responsible for drawing up a report or recommendations which, after a certain period has elapsed, may become enforceable if the parties to the dispute have not challenged them. [366] The Committee considers that this type of provision may be compatible with the Convention, on condition that the period referred to above is sufficiently long to allow the parties the necessary time for reflection.

156. The issue of arbitration is also broadly developed in Chapter 2 below on Convention No. 98.

Sanctions

157. The principles developed by the supervisory bodies in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, on condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the abusive or unlawful exercise of the right to strike, which may take various forms and may give rise to certain sanctions. If the strike is determined by a competent judicial authority to be unlawful on the basis of provisions that are in conformity with freedom of association principles, proportionate

[362] See, for example, *Botswana* – CEACR, observation, 2011; *Dominica* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Kuwait* – CEACR, observation, 2011; *Mali* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2011.

[363] See, for example, *Canada* – CEACR, observation, 2010 (when the work stoppage exceeds 60 days); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (from the end of the period of strike notice); *Côte d'Ivoire* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2004; *Fiji* – CEACR, observation, 2010; *Georgia* – CEACR, observation, 2010 (after 14 days); *Haiti* – CEACR, observation, 2010; *Malta* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; and *Uganda* – CEACR, observation, 2010.

[364] See, for example, *Burundi* – CEACR, direct request, 2011 (the possibility of recourse to the Administrative Court in the context of disputes appears to have resulted in a system of compulsory arbitration); *Egypt* – CEACR, observation, 2011 (sections 179, 187, 193 and 194 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (art. 326(12) of the Constitution); *Ghana* – CEACR, direct request, 2010 (section 160(2) of the Labour Act); *Mauritania* – CEACR, observation, 2011 (sections 350 and 362 of the Labour Code); *Mozambique* – CEACR, observation, 2011 (section 189 of the Labour Act); *Panama* – CEACR, observation, 2011 (sections 452 and 486 of the Labour Code); *Sao Tome and Principe* – CEACR, observation, 2010 (section 11 of Act No. 4/92); *Togo* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010 (sections 29, 30 and 32 of Act No. 2822); and *Uganda* – CEACR, direct request, 2011 (sections 5(1) and (3) of the Labour Disputes Act).

[365] See, for example, *Nicaragua* – CEACR, observation, 2011 (after 30 days of strike); and *Romania* – CEACR, observation, 2011 (after 20 days).

[366] See, for example, sections 242–248 of the Labour Code of *Congo*.

disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc). [367] The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved. [368] In this context, the Committee has noted with satisfaction, for example, that in *Colombia* [369] the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure. It should be noted that the non-payment of wages corresponding to the period of strike is a mere consequence of the absence of work, and not a sanction. Therefore, salary deductions for days of strike do not raise problems of compatibility with the Convention. Ultimately, the payment of wages to striking workers is a matter appropriate to negotiation between the parties concerned.

Penal sanctions

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. [370] However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant. [371] Despite these principles, several States continue to maintain specific penal sanctions for strike action, [372] including imprisonment, [373] in violation of the principles established by the Committee.

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[367] *Kiribati* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011.

[368] Certain systems are not in conformity with the Convention on this point: see, for example, *Fiji* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2011 (this responsibility lies with the labour administrative authority); and *Uganda* – CEACR, direct request, 2011 (the responsibility for declaring a strike illegal lies with the Government).

[369] *Colombia* – CEACR, observation, 2009.

[370] It should be noted that Art. 1 of the Abolition of Forced Labour Convention, 1957 (No. 105), prohibits forced or compulsory labour as a punishment for having participated in strikes.

[371] Committee on Economic, Social and Cultural Rights of the United Nations, *Concluding observations: Syrian Arab Republic*, 24 September 2001 (E/C.12/1/Add.63), para. 21. In particular, the Committee on Economic, Social and Cultural Rights expressed "concern about the restrictions in practice reported by the ILO with regard to the right to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the State party's obligation regarding article 8 of the Covenant".

[372] See, for example, *Barbados* – CEACR, observation, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burkina Faso* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2010; *Guyana* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011;

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned, [374] or the removal from office of trade union officers. [375] The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of "obstruction of business"; [376] or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute; [377] or provide for penal sanctions in the case of a work slowdown. [378] In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the *Republic of Moldova*, [379] *Guatemala* [380] and the *Syrian Arab Republic*. [381]

Republic of Moldova – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2011.

[373] See, for example, *Angola* – CEACR, direct request, 2010 (section 27 of Act No. 23/91 on strikes); *Azerbaijan* – CEACR, observation, 2010 (section 233 of the Penal Code); *Bahamas* – CEACR, observation, 2010 (sections 74(3), 75(3), 76(2)(b) and 77(2) of the Industrial Relations Act); *Bangladesh* – CEACR, observation, 2010 (sections 196(2)(e) and 291, 294 to 296 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 4 of the Better Security Act, 1920); *Benin* – CEACR, observation, 2010 (with regard to seafarers: Ordinance No. 38 PR/MTPTPT of 18 June 1968); *Chile* – CEACR, observation, 2010 (section 11 of Act No. 12927 on the internal security of the State); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (section 326 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (Decree No. 105 of 7 June 1967); *Fiji* – CEACR, observation, 2010 (sections 256(a) and 250 of the Employment Relations Act); *Guyana* – CEACR, observation, 2011 (section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill, 2006); *Libya* – CEACR, direct request, 2011 (section 176 of the Labour Code); *Madagascar* – CEACR, observation, 2011 (section 258 of the Labour Code); *Netherlands (Aruba)* – CEACR, observation, 2011 (section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964); *Nigeria* – CEACR, observation, 2011 (section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act); *Pakistan* – CEACR, observations, 2011 (Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act) and 2010 (Essential Services Act); *Philippines* – CEACR, observation, 2011 (sections 264(a) and 272(a) of the Labour Code); *Syrian Arab Republic* – CEACR, observation, 2011 (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 issuing the Penal Code); *Serbia* – CEACR, direct request, 2011 (section 167 of the Penal Code); *Seychelles* – CEACR, observation, 2011 (section 56(1) of the Industrial Relations Act); *Tajikistan* – CEACR, direct request, 2011 (section 160 of the Criminal Code); *Trinidad and Tobago* – CEACR, observation, 2011 (for teachers and employees of the Central Bank); *Tunisia* – CEACR, observation, 2011 (section 388 of the Labour Code); *Turkey* – CEACR, observation, 2010 (sections 70, 71, 72, 73 (except for subsection 3, repealed by the Constitutional Court), 77 and 79 of Act No. 2822); *Ukraine* – CEACR, observation, 2011 (section 293 of the Penal Code); *Uganda* – CEACR, direct request, 2011 (section 29(3) of the Labour Disputes (Arbitration and Settlement) Act); *Zambia* – CEACR, observation, 2011 (section 107 of the Industrial and Labour Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (sections 109 and 112 of the Labour Act).

[374] See, for example, *Pakistan* – CEACR, observation, 2010 (section 64(7) of the Industrial Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (section 107 of the Labour Act).

[375] *Pakistan* – CEACR, observation, 2010.

[376] Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 359, paras 342–370.

[377] See, for example, *Bangladesh* – CEACR, observation, 2010 (section 301 of the Labour Act).

[378] See, for example, *Pakistan* – CEACR, observation, 2010.

[379] *Republic of Moldova* – CEACR, observation, 2011.

[380] *Guatemala* – CEACR, observation, 2002.

[381] *Syrian Arab Republic* – CEACR, observation, 2002.

160. It has also noted with satisfaction the adoption of provisions in *Colombia* [382] providing that any person who prevents a lawful assembly or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law.

Dismissal for strike action and reinstatement of strikers

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against. [383] In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right. [384]

Dissolution and suspension of organizations by administrative authority

162. ***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.*** However, certain countries continue to allow the dissolution of workers' and employers' organizations by administrative authority, which is a serious and direct violation of the Convention. [385] With regard to the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all trade unions are able to carry out their activities in full independence and on an equal footing. [386]

Right of organizations to establish federations and confederations and to affiliate with international organizations

163. ***In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing***, which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level. [387]

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[382] *Colombia* – CEACR, observation, 2010.

[383] General Survey, 1994, para. 179.

[384] See Chapter 2 below on Convention No. 98.

[385] See, for example, *Nigeria* – CEACR, observation, 2011.

[386] General Survey, 1994, paras 180 et seq.

[387] General Survey, 1994, paras 189 et seq.

Document No. 237

ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General report, para. 31

International Labour Conference, 102nd Session, 2013

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

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1950s, it had expressed its views on the meaning of specific ILO instruments in terms that inevitably reflected an interpretive vocabulary.

27. Reviewing the position of the Employers' group over the years, the Committee stressed that, historically, that group had accepted the Committee's interpretive role as part of its mandate. For instance, the Committee recalled that, during the 1987 Conference Committee on the Application of Standards, addressing concerns raised by certain governments, the Employers' spokesperson had "rejected the argument that the CEACR had gone beyond its terms of reference" and both the Employers' and Workers' spokespersons "supported the CEACR's current methods of work." In the 1993 Conference Committee, the Employers' group had remarked that "disagreements over the method and substance of interpretations arose in only a small proportion of the vast number of comments made over the years by the Committee of Experts". More recently, during the 2011 Conference Committee, the Employers' group had not responded to the detailed discussion of the interpretive methods that the CEACR had presented in paragraphs 10–12 of its General Report, which discussed in considerable detail: (a) the logical necessity of interpreting Conventions in order to fulfil its mandate, (b) the necessity that its work remain committed to independence, objectivity, and impartiality, and (c) that the Committee constantly bore in mind all different methods of interpreting treaty law, especially the Vienna Convention.

28. The Committee further stressed that its mandate derived from three main principles. First, assessment and evaluation of textual meaning was logically integral to the application of ratified Conventions. In this regard, the Committee noted that it needed to bring to the Conference Committee's attention: (i) any national laws or practices not in conformity with the Conventions, which inevitably required the evaluation and thus, a certain degree of interpretation, of the national legislation and the text of the Convention; and (ii) in conformity with its working methods, the cases of progress in the application of standards, which also required a degree of interpretation. Second, the equal treatment and uniformity of the application of Conventions assured predictability. The Committee highlighted in this regard that its approach to examining the meaning of Conventions also prioritized achieving equal treatment for States and uniformity in practical application. This emphasis was essential to maintaining principles of legality, which encouraged governments to accept its views on the application of a Convention and, in this manner, promoted a level of certainty needed for the proper functioning of the ILO system. Third, the Committee stressed that its composition, i.e., independent persons with distinguished backgrounds in the law and direct experience of the different national legal systems to which Conventions were applied, helped to ensure a broad acceptance within the ILO community of its views on the meaning of Conventions.

29. The Committee acknowledged the Employers' concerns expressed by the Employer Vice-Chairperson at the June 2012 Conference that its observations were "being viewed by the outside world as a form of soft law labour standards jurisprudence". However, the Committee noted that the world outside of the ILO was not its designated or intended audience. Rather, the Committee directed its non-binding opinions and conclusions to governments, social partners, and the Conference Committee pursuant to its well-settled role in the ILO supervisory structure. While aware that its guidance was taken seriously in certain specific settings, both by domestic courts and international tribunals, the Committee considered that this reflected respect for its independent and impartial nature and for the persuasive value of its non-binding analyses and conclusions. The Committee recalled that those analyses or conclusions could only become authoritative in any "binding" sense if the international tribunal, or instrument, or the domestic court independently established them as such.

30. Regarding its working methods and particularly its examination of governments' reports and comments of social partners, the Committee recalled that it was relying exclusively on written evidence and that there were no oral hearings or scope for oral arguments. While the Committee took due note of the well documented and constructive comments of the social partners, it would welcome receiving more of such comments from the employers to better reflect their views. The Committee underscored the substantial individual and collective work it carried out in reviewing the application of Conventions which further benefited from an intensive exchange of views from a diversity of legal, social and cultural backgrounds. Finally, the Committee recalled that its mandate must by necessity be understood within the framework of the ILO Constitution which firmly anchors the aims and objectives of the Organization as being the elimination of injustice, hardship and privation and the fostering of social justice as the means for ensuring universal and lasting peace.

31. On the matter of the right to strike, the Committee of Experts welcomed the frank discussion of issues that enabled it to address directly a number of points. In the first instance, there appeared to remain the challenge as to whether there was a right to strike at all under Convention No. 87. The Committee indicated that it would take into account the arguments raised by the Employers, although the Committee considered that it had already addressed these arguments in detail in its 2012 General Survey. The Committee recognized that the Employer Vice-Chairperson appeared to make a distinction between interpretive application of the Convention and what the Employers felt was making policy, and gave particular examples of such policy extension. The Committee indicated, however, that once it had decided in 1959 that the Convention included the right to strike, the Committee was faced with the need to determine what the acceptable restrictions were, rather than leaving it as an absolute right. The Committee did this on a case-by-case basis over the years, looking at a country's law and practice, bearing in mind the information provided to it, and taking into account national circumstances, while ensuring equal treatment and universal application. In order to make this assessment, the Committee encouraged, and continues to encourage, all parties, including the employers' organizations, to make use of article 23(2) of the Constitution in order to provide relevant information for its reflection. In so far as the Committee's reliance on the

decisions of the Committee on Freedom of Association was concerned, the Committee recalled that it made its own decisions. It takes into account the decisions of the Committee on Freedom of Association but does not justify its observations on the basis of those decisions. Moreover, the Committee recalled several examples of complaints or comments submitted by international and national employers' organizations to the Committee on Freedom of Association and the CEACR in which the employers' organizations requested both supervisory bodies to make statements regarding the need to set limits to the exercise of the right to strike when, in their opinion, the legislative texts contained objectionable provisions.

32. The Committee further emphasized that, contrary to the social partners who often defend conflicting interests, and therefore had to negotiate, it did not defend interests and, although there may be differences between the experts when examining the application of Conventions, they did not negotiate between themselves when preparing their comments. The experts sought legal truth, completely objectively and impartially.

The Committee's views regarding its mandate

33. The Committee is aware that, as a result of the informal tripartite consultation in September 2012, the tripartite constituencies have requested that the Office prepare an information document on the mandate of the Committee of Experts for the 317th Session (March 2013) of the Governing Body. Following its meeting with the Vice-Chairpersons of the Committee on the Application of Standards, the Committee of Experts also has an increased understanding of the concerns expressed by the Employers and of the positions taken by the Workers with regard to its mandate. These concerns and positions were ably presented by the two Vice-Chairpersons at the meeting of the Committee on 1 December 2012. The Committee has decided to put forward the following considerations in the spirit of assisting the ILO constituents in their understanding of the Committee's work. The Committee wishes to draw attention to four principal factors.

(a) *Logically integral to application.* The terms of reference of the Committee of Experts call for it to examine a range of reports and information in order to monitor the application of Conventions and Recommendations. In fulfilling this responsibility, the Committee must bring to the attention of the Conference Committee on the Application of Standards any national laws or practices not in conformity with the Conventions, including the severity of certain situations. This logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention.

Further, in conformity with longstanding working methods, the Committee of Experts has identified over 3,000 cases of progress (noting with ***satisfaction***) since 1964, which again logically requires an interpretive judgment that a government's change in law or practice has given fuller effect to a ratified Convention as it has been construed by the Committee.

(b) *Equal treatment and uniformity assure predictability in application.* The Committee's approach to examining the meaning of Conventions stresses due regard for achieving equality of treatment for States and uniformity in practical application. This emphasis is essential to maintaining principles of legality, which encourage governments to accept the Committee of Experts' views on application of a Convention. In this manner, the Committee can promote a level of certainty needed for the proper functioning of the ILO system.

(c) *Composition.* The Committee of Experts' views on the meaning of Conventions are broadly accepted because the Committee is composed of independent persons who have distinguished backgrounds in the law and direct experience of the different national legal systems for which they must evaluate the application of the Conventions. The Committee's independence is importantly a function of its members' occupations, principally as judges from national and international courts and as professors of labour law and human rights law. This independence is also attributable to the means by which members are selected. They are not selected by governments, employers, or workers, but rather by the Governing Body upon recommendation of the Director-General. The Committee's combination of independence, experience, and expertise continues to be a significant further source of legitimacy within the ILO community.

(d) *Consequences.* Governments rely on the valid and generally recognized nature of the Committee of Experts' observations, direct requests, and General Surveys to help structure their conduct in law and practice. If governments were to view the Committee's positions as somehow discounted or of less certain value, some would feel freer to ignore its requests or invitations to comply. This would inevitably undermine orderly monitoring and predictable application of the standards – the precise result that the Committee of Experts mandate was established and then extended in order to prevent.

In addition, the Conference Committee, the Committee on Freedom of Association, and the Governing Body also rely on the Committee of Experts framework of opinions about the meaning of the provisions of the Conventions in the course of the applications process. Without this independent role, the supervisory system would lose a vital element of impartiality and objectivity, an element that has been central to the monitoring system for 85 years.

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International Labour Conference, 107th Session, 2018

Report of the Committee of Experts on the Application of Conventions and Recommendations

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contemplated to give more visibility to these cases in the report. Finally, with regard to the well-known position of her group on the right to strike, she asked whether the Committee had had the opportunity to reflect further on this issue and how it was handling this question this year.

17. The Committee of Experts indicated that it had taken due note of the discussions which had taken place in the framework of the Standards Initiative on ways to strengthen the supervisory system. The Committee informed the Vice-Chairpersons of the decisions adopted on the basis of the work of the subcommittee on working methods, notably the decision to pay closer attention to certain cases of serious failure to report and thereby enhance their visibility, both generally and in particular to the Conference Committee. Also, the Committee decided to draw inspiration from the criteria used for requesting early reports with a view to broadening the very strict criteria for breaking the cycle of review when receiving comments from workers' and employers' organizations under article 23, paragraph 2, of the Constitution. The experts also discussed the innovations introduced by the Maritime Labour Convention, 2006, as amended (MLC, 2006) which was the product of the consolidation, updating and revision of 37 Conventions and 31 Recommendations, and allowed, along with its innovative reporting form, for a coherent and ongoing supervision of its application. The MLC, 2006 was a comprehensive, holistic and innovative instrument which had reached an extraordinary level of acceptance through its rapid ratification by a high number of member States. The same approach had been followed for the adoption of the Work in Fishing Convention, 2007 (No. 188) and its reporting form. The experts also emphasized the importance of technical Conventions which accounted for most international labour standards. Beyond the threshold of fundamental and governance Conventions, the technical Conventions covered a wide range of issues and represented an important part of the work of the Committee which dedicated a large part of its time and attention to these instruments. Since 2012, one of the tools used for the examination of some of these Conventions, was to produce consolidated comments on issues raised under a number of Conventions ratified by the same country in certain thematic areas. This enhanced the coherence of comments and the visibility of the issues raised without losing sight of the specific obligations imposed by each of the Conventions considered. In certain cases, this approach allowed for the identification of additional essential issues and their inclusion in observations. The purpose was to increase the impact of the Committee's comments so that follow-up at country level could be as targeted and constructive as possible. With regard to deferred files, the experts assured the Vice-Chairpersons that the Committee always completed the examination of all files presented to it by the secretariat. However, a number of reports had to be deferred each year. Among the reasons for this were the late submission of reports after the due date of 1 September, which seriously disturbed the functioning of the system, and the increasing number of comments from employers' and workers' organizations, which was a welcome development, but also contributed to a significant increase in the information to be considered in relation to the fulfilment of the obligations under the Conventions by member States. Finally, with regard to the right to strike, the experts indicated to the Employer Vice-Chairperson that they had reviewed carefully her statement at the Conference Committee and emphasized three points. First, the Committee of Experts examined under Convention No. 87, a number of recurrent themes including violations of civil liberties, denial of employers' and workers' right to establish and join organizations of their own choosing, and the right of these organizations to freely organize their activities and formulate their programmes without interference from the State. The right to strike was often being examined as a sub-issue of the first topic (violations of civil liberties) and the third topic (organization of activities without interference). The experts therefore examined a wide range of important questions under Convention No. 87 and not primarily the right to strike. Second, the experts paid due attention to the reports received from member States which often contained information on the way the right to strike was being regulated at national level, along with numerous comments from employers' and workers' organizations on this point. Third, while Article 9 of Convention No. 87 left the extent of the guarantees of the Convention for the armed forces and police to be determined by national laws and regulations, the other provisions were not assigned to the exclusive control of national laws and regulations and therefore the Committee had a duty to review the way in which the Convention was applied across ratifying member States.

18. Information on the follow-up given by the Committee to the conclusions of the Conference Committee at its 106th Session (2017) is provided in paragraph 43 of this General Report. [4]

Mandate

19. The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by

[4] Moreover, updated information on the follow-up given by the secretariat to the conclusions of the Conference Committee can be found as of 1 April 2018, on the official website of the Conference Committee.

Document No. 239

ILC, 108th Session, 2019, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report, paras 28-29

International Labour Conference, 108th Session, 2019

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22, 23 and 35 of the Constitution)

Third item on the agenda:
Information and reports on the application of Conventions and Recommendations

Report III (Part A)

General Report
and observations concerning particular countries

International Labour Office, Geneva

thanks to the supervisory body comments linking ratified Conventions to constantly changing national circumstances, and through the integration of these recommendations and comments in numerous decisions reached by national judicial bodies. The Committee of Experts' comments would not have produced the same results if they were not enhanced by the political impact of discussion at the Conference Committee in a tripartite context. An important condition for maintaining the impact of the Experts' comments was the coherence between the two bodies, based on their complementary mandates and the cooperation they had built over time. The meeting with the two Vice-Chairpersons of the Conference Committee had become over time a privileged moment of dialogue and cooperation with the invaluable support of the secretariat. The latter did not detract in any way from each body's autonomy over its working methods and the personal commitment that the members of each supervisory body shared for international labour standards. The contribution of the Office was essential to maintaining a permanent collaboration between the two Committees as well as the other ILO supervisory bodies. This triumvirate between the two Committees and the Office should be developed even further within the framework of each body's respective mandates.

25. The Standards Initiative, aimed at a useful and healthy tripartite discussion on the future of the supervisory system, had encouraged both supervisory bodies to further improve the way in which they discharged their responsibilities in order to increase their impact. The Committee of Experts sought over the years to deliver a rigorous, consistent and impartial assessment of compliance with ratified Conventions, constantly introducing gradual improvements to produce more user-friendly, precise and concise comments. This was necessary not only in order to give clear guidance to governments but also to facilitate follow-up action and technical assistance by the Office. The need to be consistent over time meant that the Committee's wording should be carefully refined and simplified in an ongoing delicate endeavour. The subcommittee on the working methods of the Committee of Experts had been established since 2001 and had held its 18th meeting this year. The subcommittee had introduced many improvements over the years and this year again, it had taken important decisions reproduced in paragraphs 8–11 of this General Report, paying due attention to the requests made by the Governing Body in the context of the Standards Initiative.

26. Conscious of the synergies between the two bodies, the Committee of Experts had been referring to the conclusions reached by the Conference Committee in its comments. It had also introduced urgent appeals and planned to extend this practice even further to address serious lack of cooperation in reporting in synergy with the Conference Committee. The Committee of Experts placed special emphasis on the Conference Committee's conclusions, carefully reviewing their follow-up in its comments, and was pleased to note the dynamic discussion that had occurred during the last session of the Conference Committee based on the consolidated comments it had made on Haiti, Republic of Moldova and Ukraine.

27. The Committee attached great importance to the clarity of the criteria for making a distinction between observations and direct requests, in order to ensure the visibility, transparency and coherence of the Committee's work and legal certainty over time in light of the Committee's evolving membership and practices. This distinction was the outcome of a long gestation initiated in 1957. The criteria involved careful consideration of both timing and substance. Even though the criteria might appear clear at first sight, their application sometimes called for a delicate balancing. The Committee needed some room for reasoned discretion in this area, with a view to maintaining dialogue with governments and facilitating effective progress in the application of ratified Conventions. This having been said, the Committee was willing to give due consideration to the suggestions made by the two Vice-Chairpersons in future discussions on this issue.

28. Finally, the Committee appreciated the opportunity to exchange views with regard to Convention No. 87 and the right to strike and also the use made in the Committee's comments of conclusions and recommendations reached by the Committee on Freedom of Association. The latter issue had been raised by the Employer Vice-Chairperson at the last session of the Conference Committee in May–June 2018. The position of the Committee of Experts on the right to strike had been set forth in numerous exchanges with the Vice-Chairpersons since 2013. The Experts appreciated that these parties had different views on the issue. At the same time, the two Committees were in agreement on the recurrent themes raised in the Committee's comments in relation to freedom of association. These concerned in the first place the right to be free from violence and threats to civil liberties; second, the exclusion of certain categories of workers from the right to organize under the Convention; and third, the autonomy of workers' and employers' organizations explicitly protected under the Convention in Articles 2, 3, 4, 5 and 6. One aspect of this autonomy, the right of workers' and employers' organizations to organize their activities and formulate their programmes, involved taking industrial action in appropriate circumstances. The right to strike was not the main focus of examination by the Committee though it was an important one. Based on the constitutional obligation to report on the way ratified Conventions were applied in law and practice, the Committee's comments were intended to guide the actions of national authorities with respect to this right. The Committee's guidance also relied on reports from governments and comments from the social partners, reflecting application of the right under varied national circumstances. The effort to understand the diversity and complexity of country settings was made when the Experts examined the application of all Conventions and not just Convention No. 87, and was certainly something the Experts took very seriously when examining issues around the right to strike.

29. Regarding the comments from the Employer Vice-Chairperson on references made to CFA cases, the Committee fully recognized the different mandates and working methods of the two Committees and did not routinely refer to CFA conclusions and recommendations. When the Committee did so, it was basically for two reasons: either because the CFA had referred the legislative aspects of a case to the Committee of Experts, or for other intersectional

reasons, for example when the CFA had addressed similar issues in the recent past as was sometimes indicated by the government or the social partners themselves. The CFA's assessment of the practical application of Conventions on freedom of association sometimes informed the Committee of Experts as to how the Convention was applied, especially as the CFA based its examination on complaints. The Committee's approach reinforced the integration of the supervisory mechanisms, while doing so through a suitably tailored set of circumstances as part of the independence and discretion that the Committee was expected to exercise.

30. Concerning considerations of diversity in placing double footnotes, the most important criterion for the Experts was the urgency of the issue but they were conscious of the need to maintain all types of balance. The Experts were aware of the challenges faced by the two Vice-Chairpersons in maintaining a balance among cases discussed at the Conference Committee in particular in relation to regional diversity. The concerns expressed by both Vice-Chairpersons were taken very seriously by the Experts and would be kept in mind moving forward.

31. Information on the follow-up given by the Committee to the conclusions of the Conference Committee at its 107th Session (2018) is provided in paragraph 73 of this General Report. [3]

Mandate

32. The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.

Looking into the future on the occasion of the ILO's Centenary

33. A century of any institution's existence invites both celebration and reflection. As the ILO embarks on its second century, the Committee of Experts wishes to offer some reflections on its own past and possible future role. The context in 2019 is different from 1919, but no less challenging today: a persistent disjunction between economic and social policies, an erosion of multilateralism, persistence of poverty and growing inequality within and between member States, a mixed picture when it comes to human rights, and the fragility posed by climate change and conflict. Moreover, the speed at which the combined forces of technology, demographic and climate change, globalization and migration are transforming our world of work presents additional challenges to the national and global institutions embodying the social contract of our time and the peace and security supported by the social contract.

34. Prior to any reflection, the Committee has to be mindful of the mandate originally bestowed on it by the International Labour Conference in 1926: to examine the reports of governments required under article 22 of the ILO Constitution and report on its findings to the Conference.

35. In 1926, the Organization operated on a vision of harmonizing national labour legislation among 56 member States at relatively comparable levels of development. Its initial purview was to supervise the application of some 20 Conventions. In 1969, that substantive remit had expanded to 121 Members and over 250 Conventions. Meanwhile, decolonization in particular had not only increased the Organization's membership but had started to alter the couching of international labour standards and their supervision. The introduction of flexibility clauses in Conventions and, more generally, of standards less geared towards predominantly legislative compliance and more towards the sound orientation of policies and institutions needed to realize social justice in newly independent States increasingly inspired the Committee to invite member States to rely on the gradually expanding technical cooperation activities of the Organization.

36. The Committee modified aspects of its role and working methods to adapt to the times. In 1946, the ILO Constitution was amended to include an obligation in member States to supply at the request of the Governing Body reports on Conventions they have not ratified. The General Surveys to which these reports give rise allow the Committee to examine the difficulties reported by governments in applying standards; to clarify the scope of these standards; and occasionally indicate means of overcoming obstacles to their application. Today, the General Surveys, besides providing

[3] Moreover, updated information on the follow-up given by the secretariat to the conclusions of the Conference Committee can be found as of 1 April 2019, on the official website of the Conference Committee.

Document No. 240

ILC, 58th Session, 1973, Report of the Committee on the Application of Standards, pp. 556-557 (Mauritania)

INTERNATIONAL LABOUR CONFERENCE

FIFTY-EIGHTH SESSION
GENEVA, 1973

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA, 1973

APPENDICES

Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

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Report of the Committee on the Application of Conventions and Recommendations

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and the confidence accorded to standards and their procedures. It was difficult to understand that the Government insisted on maintaining the restrictions applicable to non-registered organisations while insisting that in practice these organisations enjoyed the same rights as registered organisations. The strike was certainly the ultimate weapon, but a good system of industrial relations should lead to its not being used, on condition that strikes nevertheless remained possible. A gesture of amnesty seemed to be desirable. The problem was serious and the Government should be pressed to take the appropriate measures. It seemed moreover desirable to await the conclusions of the Committee on Freedom of Association.

The Worker member of Pakistan stated that the question had great importance and bore upon the interpretation of Convention No. 87. If this interpretation were left to the discretion of governments, the basic principles of this Convention would not be respected. Convention No. 87 was very clear. The Fact-Finding and Conciliation Commission was of the opinion that the legislation should be amended; but difficulties still persisted.

The Employers' members expressed the hope that the national tripartite committee would contribute to finding a solution and that the legislation would be brought into conformity with the Convention.

The representative of the Secretary-General pointed out that the questions submitted to the Committee had been raised for a number of years and had been the subject of several procedures. Twelve complaints relating to Japan were at present before the Committee on Freedom of Association. One had been the subject of a report, on another there had been interim conclusions, and the others were still being examined. There existed, moreover, at the national level an Advisory Committee for the Public Services which was charged with the examination of the questions and was due to present a report next September.

The Government representative stated that it was sure that all efforts would be made with a view to finding a solution in the public sector on the basis of the report of this Advisory Committee.

The Committee noted that there were complex problems in the application of Conventions Nos. 87 and 98 in Japan, but that discussions on these matters were going on. The Committee urged that efforts be made to ensure that these discussions would lead to positive conclusions in the course of the next few months.

Liberia (ratification: 1962). A Government representative made the following statement:

Liberian legislation recognised freedom of association and the right to collective bargaining. A draft Labour Code taking into account ILO Conventions had been submitted to the present session of the National Legislature. This fact had been noted by the Committee of Experts in its observation concerning Convention No. 98. As regards the question of public servants, the provisions of the new Code limiting its scope would be in conformity with Article 6 of Convention No. 98. As regards protection against anti-union discrimination referred to in Article 1 of this Convention the draft Labour Code reinforced the right of workers to join trade unions and the right to collective bargaining. It would seem appropriate to wait for the adoption of the Labour Code before re-examining the situation.

The Workers' members made the following statement:

In Liberia there were important restrictions on trade union rights and it was therefore even more regrettable that the Government's last report had not referred to the comments of the Committee of Experts. Agricultural workers and industrial workers could not be organised in the same union or even come together in one trade union federation. This restriction had been imposed in 1966 to counter attempts which were then being made to organise plantation workers. It had the effect of preventing the development of trade unions among agricultural workers. The Government's action in impeding the formation of trade unions among agricultural workers was particularly serious, given the importance of the plantation sector in Liberia, the large number of workers employed there, and the great room for improvement in their conditions as evidenced by the fact that Liberia had denounced the Plantations Convention instead of making good the shortcomings in its application noted by the Committee of Experts. Workers in the public sector did not have the right to organise. This restriction affected not only the civil servants, but even industrial employees of public enterprises. Finally, even where workers enjoyed the right to create trade unions, the public authorities intervened in the electoral processes within the unions. All these were serious violations of the Convention which should be put right without delay.

The Workers' member of Liberia made the following statement:

Liberia was going through a period of transition with a new President and a new programme which gave rise to some hope. Convention No. 87 had been ratified in 1962. From the moment that an effort had been made to organise the Firestone plantation workers, trade unionists had been arrested. Firestone and other plantations had succeeded in getting the Government to adopt laws against the organisation of plantation workers. In 1966 and in 1967, the ICFTU and the International Federation of Plantation Workers and the Liberian Congress of Industrial Organisations had filed simultaneous complaints with the ILO concerning restrictions on freedom of association in the plantations. Having regard to the slowness of the procedure, the trade unions had made an effort to negotiate with the Government. In March 1972 they had addressed a petition to the President requesting the modification of the legislation and the application of Convention No. 87. They hoped that the President would do something. He had created a Commission composed of the Ministers of Labour and of Justice. The trade unions had been able to discuss with the Minister of Justice but they had not yet received a reply to their petition. It was to be hoped that changes would be made in the legislation, in particular to permit plantation workers to join trade unions. They were not capable of organising alone; they needed well-formed organisations.

The Workers' member of Sierra Leone stated that Liberia was not in a period of transition, and that it should be mentioned in the special list under criterion 7 to prompt the Government to take urgent measures to solve the existing problems.

In reply to questions put by the Employers' members and the Workers' member of the United States, the Government representative made the following statement:

The new Labour Code took into consideration all the discrepancies pointed out by the Committee of Experts concerning Conventions Nos. 87 and 98 and it contained provisions conforming to these Conventions, as the Committee would be able to see next year when it is adopted. In addition, it had been prepared with the assistance of an ILO expert. The text would be communicated to the ILO after adoption.

The restrictions on the right of employees in the public sector to join trade union organisations and the supervision by the public authorities of trade union elections had been eliminated in the new draft Labour Code.

The Workers' members made the following statement:

In the case of Convention No. 98 the Government had indicated in its report that the legislation would be brought into conformity with the Convention. It had indicated today that the draft Labour Code would also bring the legislation into conformity with Convention No. 87. Despite the seriousness of the violation of these two Conventions, and having regard to the positive elements referred to by the Government representative and to the present situation in Liberia the Committee could give the Government a period of one year to put its legislation in order and could request the Committee of Experts to examine the question very attentively. The case should be included in the special list next year if there was not a remarkable improvement.

The Committee requested that the Committee of Experts examine the situation with very great care and expressed the hope that national legislation would be brought into full conformity with Conventions Nos. 87 and 98 by next year.

Madagascar (ratification: 1960). The Government communicated the following information:

The restructuring of the Labour Code is under way, and will ensure that section 3 no longer includes the phrase " any form of political activity whatsoever is prohibited to trade unions " and that the words " economic, industrial, commercial and agricultural interests " in section 17 are replaced by " common interests ". This is what was recommended by the National Harmonisation Committee, which concluded that section 3 of the Labour Code should be replaced by the wording " the trade unions have as their exclusive object the study and defence of their occupational interests ".

In addition, a Government representative stated that the amendments to the Labour Code would completely safeguard the freedom of trade unions, without at the same time preventing the administration from bringing before the courts trade union members who might be tempted to violate the laws on freedom of the press, freedom of assembly, freedom of association, as well as the penal laws.

The Workers' members and the Employers' members, regretting that the Government had supplied its reply at such a late date, stated that communication of replies by governments at the very last moment was not satisfactory since it weakened the supervisory procedures.

The Committee had taken note of the information supplied by the Government which would be examined by the Committee of Experts.

Mauritania (ratification: 1961). A Government representative made the following statement:

In 1969 direct contacts had been requested for eight Conventions. Following these contacts, the Government had undertaken progressively to bring the legislation into conformity with these Conventions. The Committee of Experts had noted with satisfaction regulations and legislation adopted in 1972 as regards Conventions Nos. 3, 18, 33, 52, 81, 90 and 94. There remained only Convention No. 87 with regard to which the Government had sent a Bill to the ILO by letter dated 11 May 1973, indicating that if it were judged satisfactory by the ILO and the Committee of Experts it would be submitted to the

Parliament with a view to its adoption before the next session of the Conference.

In 1969 and 1970 certain trade unionists, taking advantage of internal unrest in the workers' movement, wanted to create trade unions on an ethnic or linguistic basis, which was judged contrary to national unity; the Government, in order to put an end to this tendency which was dangerous for the country, decided to allow only a single union for each occupation. Unfortunately, the Government had not explained its reasons to the Committee of Experts which considered the text to be contrary to the principle of freedom of association, whereas in reality it was the trade unionists who had falsified the spirit of the Convention. These difficulties had now disappeared, the trade unionists having understood the necessity for trade union unity on an occupational basis. This was the reason for which a new text had been prepared designed to respect Convention No. 87 while at the same time protecting the country against acts liable to harm national unity. If it was not considered satisfactory by the Committee of Experts direct contacts could again be requested with the ILO.

The Committee was informed that, in a letter sent on 11 May and received in the ILO on 25 May 1973 the Government set out the reasons which had led to the Act of 1970. It indicated that it intended to meet its obligations and it asked for the assistance of the ILO in regard to the legislative amendments which it proposed to sections 1, 2 and 9 of Book III of the Labour Code. It was for the Committee of Experts to give an opinion. The ILO had sent a provisional reply on 29 May 1973 noting the despatch of the draft text and indicating that it still seemed to include certain divergences with the Convention in spite of the improvements which it contained. The ILO remained at the disposal of the representative of Mauritania.

The Workers' members made the following statement:

It was appropriate to take note of the efforts made by the Government to bring its legislation into conformity with the Convention and the fact that it wished to have the views both of the ILO and the Committee of Experts. The Government had referred to the reasons which led to the adoption of the 1970 Act. However, the reasons were not relevant to the question whether there was conformity with a Convention or not. It was necessary that workers remain free to create the trade unions of their choice. The requirement that trade union leaders should belong to the occupation represented was incompatible with Article 3 of the Convention. The fact that the Minister of Labour could at his discretion decide to prohibit a strike while submitting a collective dispute to arbitration was contrary to Articles 3 and 8 of the Convention.

The Employers' members associated themselves with the comments of the Workers' members. It was essential that the legislation be brought into conformity with the Convention.

The Government representative stated that the proposed Bill was designed to eliminate the various divergences indicated by the Committee of Experts. The Government desired to fulfil its obligations but wished that account be taken of the difficulties of countries where the trade union tradition was not as old as in the industrialised countries.

The Committee took note of the intention expressed by the Government to conform fully to the Convention, as well as the request for an opinion that it had addressed to the ILO.

Mexico (ratification: 1950). The Government communicated the following information:

The most recent comments of the Committee of Experts concerning the regulations governing the right to organise of public servants related to three fundamental points:

1. *Article 2 of the Convention relating to the right of workers to establish organisations of their own choosing.* The right to organise for the defence of their interests is enjoyed not only by workers in the private sector but also by those in the service of the State. By its very nature the activity of the State cannot be interrupted or interfered with because the public authorities, as those responsible for the community, have to discharge important and urgent duties. It is, therefore, obvious that it must be ensured that state activity suffers the fewest possible interruptions, some of which are caused in practice by the organised struggle of the workers to obtain improved conditions of employment and higher rewards for themselves and their families. In accordance with the historical evolution of Mexican labour law and the revolutionary antecedents of the Government, the legislature considers the aspirations of the public servants legitimate, but has sought to reconcile them with the responsibility of the public authorities.

The formula which so far has appeared the most suitable consists in fully guaranteeing the right to organise of public servants, but recognising the majority workers' association, so that the public authorities may know with whom they have to deal in case of dispute and so that their attention shall not be distracted by constant labour disputes which, however important, are of secondary importance beside the running of the State. This does not mean that minority associations cannot be formed or, even less, that prior authorisation is required for them, but simply that they must wait until they achieve the largest membership before being recognised by the State. This is confirmed by the wording of section 68 of the Federal Act governing workers in the service of the State, under which, when more than one group of workers claims to represent the employees, recognition shall be granted by the Conciliation and Arbitration Tribunal to the majority group.

The Government repeats its affirmation that the Federal Act governing workers in the service of the State in no way restricts the right of public servants to form the organisations which they consider appropriate for the defence of their interests. It should be recalled that this Act regulates Part B of the Federal Political Constitution, and thus cannot be inconsistent with its letter or spirit; in interpreting its terms therefore, in their application to the right to organise, the general rule contained in division X of the above-mentioned Part B must be respected, and this provides that " workers shall have the right to organise for the defence of their common interests ". It must thus be understood that state employees can form as many organisations as they wish for defence of their interests, but that for the above-mentioned reasons only the majority union will receive recognition through legal registration. This does not imply that other groups of workers cannot exist alongside the registered union, as is proved by the wording of section 68 referred to above, and of section 73 which provides for the cancellation of registration when another association is registered which represents the majority. Further, the latter provision adds that when two organisations claim to represent the majority a recount must be taken to resolve the situation.

The recognition of the majority organisation is logically necessary, since it would be impossible for an employer, whether state or private, to enter into agreements with a plurality of organisations within the same undertaking. This atomisation of labour relations would lead to chaos. The criterion followed by the ILO Constitution itself for the appointment of non-Government delegates to the Conference is to provide that they should be chosen in agreement with the most representative organisations.

The Government wishes to clarify certain other aspects of the Committee of Experts' observation.

(a) When section 77 of the Federal Act governing workers in the service of the State provides in subsection IV that trade unions are responsible for " protecting and representing their members in dealing with the authorities and before the Federal Conciliation and Arbitration Tribunal when so requested ", this does not confer these obligations on them exclusively but spells out that they have this *obligation* so that the basic function which they are to fulfil shall be established and they will not be able to avoid their responsibility. In further confirmation, it will be observed that this provision of section 77 imposes the obligation to protect and represent their members on trade unions " when so requested ", so that if there is no request the members of the trade union can defend themselves or be represented by somebody distinct from the trade union. It will also be appreciated that the obligation of trade unions is limited to protecting and representing " their members ", so that persons who are not members cannot call upon the union to represent and protect them, and must therefore have resort to somebody distinct from the trade union.

(b) Section 67 of the Act governing workers in the service of the State is merely designed to define the basic function of a trade union, which is characterised as an association of workers who work in the same establishment, formed to study, improve and defend their common interests.

(c) Article 10 of the Convention defines the term " organisation " to mean " any organisation of workers or employers for furthering and defending the interests of workers or employers ". What doubt can there be that the minority organisations which may be formed in the same establishment have such an objective? Article 10 is designed to distinguish organisations which are truly occupational from others designed to serve other purposes, cultural, educational, sporting, artistic, etc., which would thus not come within the scope of the Convention.

2. *Prohibition of the re-election of trade union officers.* The Government repeats that the prohibition of the re-election of trade union officers contained in section 75 of the Federal Act governing workers in the service of the State is not contrary to Article 3 of the Convention. A careful reading of the Mexican Act, section by section, reveals that no provision authorises or even tolerates the imposition of representatives on the workers or postulates an electoral system favourable to certain groups. On the contrary, the spirit which inspires it is that of avoiding the creation of cliques who would perpetuate their leadership of the trade unions to the detriment of mobility in the trade union movement.

The Committee should take into account that political and administrative experience in Mexico have amply demonstrated the damage caused by prolonged tenure of office. The Mexican revolution has established as a fundamental principle, which is affirmed in every official document, the prohibition of re-election.

Document No. 241

ILC, 64th Session, 1978, Report of the Committee on the Application of Standards, pp. 29/28-29/29 (Ethiopia)

International Labour Conference

Provisional Record

Sixty-fourth Session, Geneva, 1978

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had held elections for their officers in complete independence and without external interference. In addition, the Governing Body had decided to consider as closed cases Nos. 685, 781, 806 and 814, as well as the complaint procedure concerning the application of Convention No. 87, since the information supplied was considered satisfactory. Finally, because of the current process of normalisation of the situation, which should terminate with the elections of 9 July 1978, the Government had decided that the draft Labour Code would be transmitted to the Congress which emerged from the elections. The Congress would begin its work on 6 August 1978. In the meantime, the present labour legislation would remain in force.

The Workers' members recalled that last year's discussion had not been encouraging and that the Committee had included a special paragraph in its report concerning its concern over the application by Bolivia of Convention No. 87. This year, following a number of events, and perhaps thanks to the action taken by this Committee, there had been satisfactory changes which the Committee should point out. Like the Committee of Experts the Committee on Freedom of Association and the Governing Body, the Workers' members noted with satisfaction the general amnesty which had been declared and the holding of trade union elections with a view to re-establishing a normal trade union situation. There had been real progress, the proof of which was that the Governing Body had decided to terminate its examination of the complaints against Bolivia. The Workers' members hoped that the new Labour Code which was being prepared, and which had to be submitted to the Congress, would guarantee to the workers the exercise of all trade union rights, and in particular the right to freely constitute organisations of their choice and their independent representation in negotiations at the national sectoral or undertaking levels. They also hoped that next year the situation could be considered completely settled both in legislation and in practice. The new code would have to be submitted to the Committee of Experts for examination.

The Employers' members considered that this case was very encouraging. They welcomed the decision to declare a general amnesty, the holding of trade union elections and the drawing up of a draft Labour Code concerning which consultations were now being held. These measures went in the right direction. They hoped that by next year the Labour Code could be adopted and that it would be in conformity with the Convention.

The Committee noted with satisfaction the progress made in restructuring the legal order and thanked the Government representative for the information he had supplied.

Central African Empire (ratification: 1960). The Government indicated that a draft text was in preparation, for the amendment of provisions of sections 6 and 10 of the Labour Code so as to put them into conformity with the Convention. Information on the matter will be communicated in due course.

The Workers' members stated that they were aware that the application of Convention No. 87 sometimes posed problems. However, they had to note that there had been no reply to the comments of the Committee of Experts for many years.

See also under Convention No. 29.

Dominican Republic (ratification: 1956). A Government representative made the following statement:

His delegation had never intended to avoid the Committee's questions and there was no lack of good will, since despite his commitments he was present. He had only become aware of the accusations made when reading " ILO Information ", volume 14, No. 2, 1978. Only on 15 June 1978 had he received a copy of a letter dated 14 June 1978 and addressed to the Secretary of State of Foreign Affairs, to which was joined a document containing a number of accusations made for the most part before the visit of ILO representatives to his country. As early as 16 June 1978 he had sent a letter to a member of the Governing Body of the ILO stressing that he did not consider the situation in his country so grave as was being intimated. Although he was not in a position to comment on these accusations, he stressed that he had most serious doubts that his Government would tolerate such violations of the labour legislation by national or foreign companies, while Dr. Joaquín Balaguer, President of the Dominican Republic, had always been a defender of social justice and he had been praised by the international community for his contribution to the democratisation of his country. The Government representative had that very morning has a meeting with the Director-General of the ILO, and it would appear that a number of communications had not reached their destinations. He added that his country's delegation to the Conference consisted of only one person, and it was difficult to be in two places at once and to satisfy the needs of all the Committees.

The Workers' members regretted that this case could not really be dealt with and stated that next year it should be put at the beginning of the agenda. They expressed their concern over the fact that comments on this Convention had been made by the Committee of Experts for several years, and that serious violations of trade union rights concerning several categories of workers as well as violations of freedom of association were before the Committee on Freedom of Association. That Committee had expressed regret over the negative attitude of the Government, which had not consented to the sending of a mission to the country. The Governing Body had given wide publicity to its conclusions concerning the facts alleged; arrests, dismissals, the disappearance of trade unionists, violations of the right to strike, the occupation of trade union premises, freedom of association of agricultural workers, etc. They insisted that the Government take very seriously the concern which had been expressed on many occasions and hoped that progress could be noted next year and that a mission would be able to visit the country.

The Employers' members agreed with the Workers' members that a mission should be able to examine the situation and that the case should be examined early next year.

The Committee decided that the above statements would be reflected in its report.

Ethiopia (ratification: 1962). A Government representative made the following statement:

It was necessary to consider the fundamental changes transforming the gains of the Ethiopian Revolution to adapt to the situation of a country entering a new era. In four years there had been consolidation of a new State, land nationalisation and all that went with collective ownership, and the organisation of peasants in democratic associations at the same time as urban associations were being constituted, the nationalisation of the means of production, and the establishment of progressive labour legislation.

The Committee of Experts had considered that trade union unity could not be voluntary. This meant the assertion of a division between the aspirations of the workers and the Labour Proclamation, and also it assumed the unions had a passive role in the implementation of the Proclamation. It was necessary to take account of the historic development of trade unions and the aspirations of the workers in order to evaluate trade union unity: such unity, which strengthens the workers, is a result of the fact that the old Confederation of Workers existing up to 1975 had been reformed, and the workers were now organised on revolutionary principles. To interpret the Proclamation as having been imposed by the Government would be to ignore the wishes of the workers themselves.

The progress made ought to be recognised by the ILO; in addition, a study was to be undertaken to examine and if necessary amend the Labour Proclamation, and the trade unions would participate in the study by making their recommendations.

As regards management personnel and domestic servants, it should be stressed that the Labour Proclamation was not the only text governing the right of association. Many associations had been created, urban, peasant and other associations. The fact that the Proclamation did not deal with certain workers did not mean they were not protected, for instance by access to, conciliation and arbitration procedures. The possibility for public servants to organise was being studied.

As regards the right to strike, the Labour Proclamation did not prohibit it but laid down procedures which did not prevent workers from exercising their rights. As for the international affiliation of trade unions, it was unlimited. The aims of the All Ethiopia Trade Union were expressed in the statute lodged with the Ministry.

Finally, the dissolution of the Employers' Federation of Ethiopia did not result from government act, but from the nationalisation of the large enterprises from 1975, following which the secretariat of the Federation requested new principles for the organisation from the Government. Managers in the public and private sectors could now exchange information, and the change in structure was manifested in the Chamber of Commerce.

There had been an ILO mission to Ethiopia in March 1977, and its observations of the facts indicated that the conditions of work appeared to be adapted to realities in the country. It should be stressed that despite the state of war existing there had been no recourse to special legislation, a state of emergency or a state of siege—which indicated a positive attitude on the part of the Government. The possibility of direct contacts should be considered.

The Workers' members stated that whatever the economic and social system in question and whether or not it was being transformed, observance of the ILO Constitution and ratified Conventions was still essential. If the direct contacts which appeared to be desired enabled a solution, they should be used. It was certainly necessary to show understanding of the present

situation, but excuses should not be sought in past or present circumstances for disregarding obligations. The Labour Proclamation contained several points which were not in harmony with Convention No. 87. Since the Government had indicated its intention to re-examine the Proclamation, the Workers' members agreed to show some patience, especially since the present acts of the Government were compatible with observance of the Convention. Besides this, the Government must reply to the comments of the Committee of Experts, which had not been done this year.

The Employers' members stated that they understood the importance of the problems raised by the changes being undergone in the country, and the exceptional situation, and the need to take them into consideration in this case as in others. There were still however unanswered questions, in particular: did domestic servants have a right to appeal to a conciliation and arbitration service? Had the right to strike been demonstrated by a factual strike since 1974? Was the right for employers to create organisations within the Chamber of Commerce an obligation or a free choice?

A Government representative indicated that domestic servants had the right to appeal to a conciliation and arbitration service in either the urban or peasant associations. As for the right to strike, this was not prohibited, as recognised by the Committee of Experts. However, there were procedures which had to be followed before strikes were called. Finally, employers' associations were not obliged to join the Chamber of Commerce but could join if they so wished.

The Employers' members considered that, apart from the direct contacts request, account should be taken of the observations of the Committee of Experts, and they stated they awaited positive results.

The Government member of the USSR indicated that this was a case demanding a cautious attitude. The Committee traditionally gave the greatest attention to problems of priorities in countries, and there was here an exceptional situation, which had not yet come to an end, as the result of external aggression. It was in this light that the comments of the Committee of Experts should be considered; moreover, the explanations which had just been given showed a constructive attitude on the part of the Government with regard to the ILO.

As for the substance, the question of the voluntary nature of trade union unity in Ethiopia was viewed in different lights by the Committee of Experts and the country in question. The country considered that trade union unity was the result of the historic initiative of the trade unions and the Committee of Experts should take due account of this information and look at the matter differently. As for the right to strike, the Committee of Experts duly noted that the provisions in question do not impose an " absolute " prohibition on strikes, although in fact they do not impose any prohibition, simply submitting them to a procedure. This was not a phenomenon particular to Ethiopia but could be found elsewhere, in countries where there is neither an exceptional situation nor infringement of the provisions of the Convention. Further, it was doubtful whether ILO standards dealt with the right to strike, and if they did not it was in any event impossible for the Committee of Experts to find divergence between the Ethiopian legislation and Convention No. 87.

The Government representative had mentioned the proposed work for improving the legislation and this was proof of the voluntary co-operation which was desired, and this was a fundamental point transcending divergencies of opinion. It should therefore be agreed that the Ethiopian Government's position should meet with understanding in this Committee.

The Government member of the United Kingdom stated that he recognised the reasons for thanking the Ethiopian representative for his explanations, but the absence of the report requested by the Committee of Experts for this year was to be regretted, as it made it impossible for the Experts to give a considered opinion of the situation. He hoped a report would be supplied in time to enable questions like those of trade union unity to be dealt with properly, as this was a fundamental question often raised, as well as the right to strike which, although not expressly laid down in Convention No. 87, was implied by the provision there for the right freely to organise activities, a freedom which legislation such as the Labour Proclamation would limit. He considered that the Government representative's statement that the Employers' Federation had not been dissolved but had simply disappeared by virtue of the socialist revolution illustrated well the point of view expressed by the Employers that, in an economic and social system such as Ethiopia's, employers' rights can no longer exist, demonstrating thus the incompatibility of the system with the tripartite structure of the ILO.

The Government member of Bulgaria stressed the historic changes and the steps taken in the interest of the workers in the form of a continuing effort to adapt the legislation. This corresponded with what is requested in point 6 of the Declaration of Principles of the World Employment Conference. It should be noted that employers could subscribe to the Chamber of Commerce and that domestic and public servants could organise. Review of the Labour Proclamation could contribute to these improvements; it also showed goodwill in this respect. As for technical co-operation, the ILO was making an important contribution to the development of Ethiopia. The statements of the Government representative should be noted.

The Employers' member of the USSR stated, on behalf of the employers of socialist countries, that he was satisfied with the explanations of the Ethiopian Government and their positive tenor. He stressed that although the situation in the country had not yet been normalised, the Government in the process of undertaking social change had enered into active co-operation with the ILO. He supported proposals that the discussion of this case should simply be reflecetd in the Appendix of the Committee's report.

The Workers' members proposed a paragraph to express in a positive manner the view expressed on all sides, following last year's discussion and taking into consideration the exceptional situation in the country, despite the absence of a reply to the Committee of Experts, but taking into consideration the explanations given here, recognising that the Labour Proclamation should be re-examined and perhaps amended and that direct contacts might be initiated.

The Government representative indicated that reports on ratified Conventions would be sent as soon as possible and would take into account the observations made this year.

The Employers' members expressed their agreement to the proposal for a special paragraph. They asked that if there were direct contacts it should be determined why the employers in nationalised industries had resigned from their national organisation and requested that the special paragraph should express their concern at the dissolution of the Employers' Federation of Ethiopia.

The Committee noted the information supplied by the Government. It welcomed the Government's intention, despite the difficult situation in the country, to examine carefully the comments of the Committee of Experts in the course of the contemplated revision of existing legislation, and that it was proposing to have recourse to the direct contacts procedure as regards this Convention. It hoped progress would be made and that full information would be communicated for examination next year by the Committee of Experts and the Conference Committee. The Committee decided to include a special paragraph in its report to this effect.

Guatemala (ratification: 1952). A Government representative regretted that the draft law which had been prepared during the direct contacts carried out in 1975 had not yet been examined by Congress. Nevertheless, a change of government would take place in July 1978 and the Congress of the Republic would contemplate the measures to be taken to bring national legislation into conformity with the Convention.

The Workers' members recalled that Convention No. 87 contained fundamental standards and that it was particularly important that the Government take measures in this area.

The Employers' members expressed the hope that Guatemala would soon ensure the implementation of the Convention.

The Committee expressed the hope that the necessary measures would quickly be taken to give effect to the Convention.

Honduras (ratification: 1956). A Government representative recalled the statement made last year to the present Committee by the Minister of Labour regarding the implementation of changes in the labour code. The adoption of these changes, which had originally been scheduled for November 1977, had been delayed somewhat. Direct contacts had been carried out last November to finalise a text which would bring the legislation into conformity with the Convention. This text had been examined in detail and a circular had been sent to trade union federations for their comments. The Ministry of Labour had thereafter prepared a draft which took into account the comments of these federations. The Council of Ministers had submitted this draft to the Supreme Court of Justice, which had examined it and made its comments in this regard. The Head of State had now to proceed to the adoption of the draft in the Council of Ministers. It was possible that the draft would be enacted and published in the Official Journal very shortly. In any case, the Government delegation would inform the Government of the discussions which had taken place in the present Committee.

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ILC, 65th Session, 1979, Report of the Committee on the Application of Standards, pp. 36/35-36/36 (Ireland)

International Labour Conference

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conditions prevailing in Ethiopia and particularly the unprecedented exercise of freedom of association in the country.

With this in view, the Government would like to express its wish to the Committee of Experts once again not to be too legalistic on certain points. It is still confident that the committee will try to create an atmosphere of mutual trust and understanding on this issue. Further explanation will be given as early as possible concerning some points raised by the committee for which additional information was requested.

The Committee was informed that a communication had been received from Ethiopia requesting a direct contacts mission in January 1980 to examine the application of Convention No. 87.

The Workers' members therefore agreed not to discuss the case this year. However, if this meant that direct contacts would only take place after the revision of the Labour Proclamation of 1975, it would make no sense for them to take place. When it was decided not to discuss a particular case because direct contacts had been requested, this meant that the request should have been made before the discussion took place.

Greece (ratification: 1962). The Government communicated the following information:

The Greek Government, considering that the collection of trade union dues under collective agreements should be the sole source of revenue for occupational associations as well as the sole method for them to gain economic independence, provided in article 22(2) of the 1975 Constitution in force that "general working conditions shall be determined by law, supplemented by collective labour agreements contracted through free negotiations and, in case of the failure of such, by rules stipulated by arbitration".

In addition, in conformity with the interpretive provision concerning article 22 of the Constitution, among the general working conditions is the determination of persons who are charged with the collection and the restitution of the dues provided for in the statutes of trade union organisations for their members. Consequently, the Constitution in force has removed the obstacles that existed before 1975 concerning the collection of trade union dues through the check-off system established by collective agreements. In the future, trade union organisations will be free to conclude collective agreements providing for, inter alia, collection of trade union dues by the check-off system. It should be pointed out that this system has already been applied to important sectors of the workers, such as bank employees, seamen, railwaymen, employees of the Public Electricity Company, and of the Telecommunications undertaking, etc.

As has been already stated, the system of collection of trade union dues through the check-off could also be instituted by arbitration awards, which further assures the possibility of regulating the collection of dues from their members even where employers refuse to conclude a collective agreement. Thus, from the point of view of labour legislation, trade union organisations are completely free to regulate the collection of dues from their members. Consequently, there is no question of the Government's intervening, which could be seen as interference in the internal affairs of the organisations, which is prohibited by the Constitution. Nevertheless, as the Minister of Labour, Mr. Lascaris, stated before Parliament on 16 August 1977, the Government of Greece is ready to propose a Bill aimed at regulating the question of collection of trade union dues and at doing away with the present provisional system of financing as soon as such a request is made by workers' organisations.

As no request has been made up till now, the present system continues to function provisionally, in the sense that it will be done away with as soon as the workers' organisations so request.

It must be pointed out that the rate of financing of trade union organisations by ODEPES is proportional to the number of members in these organisations who have fulfilled their financial obligations. Besides, this system of financing in no way hinders the check-off system which already applies in several organisations under collective agreements.

Moreover, an organisation's application of the system of financing by ODEPES ought to be provided for in its own statutes and approved by the general assembly of its members.

Guatemala (ratification: 1952). A Government representative recalled that at this session of the Conference the Minister of Labour had stated that on 1 July of this year the Congress of the Republic would receive the draft of a new labour code which would ensure freedom of association. The Government would ensure that these rights were guaranteed and would supply further information on the improvements introduced.

The Workers' members regretted that this Convention was not fully applied. Amendment to the Labour Code had been prepared during the direct contacts in 1975, but no progress had been made. They hoped that next year the Government would report real progress.

The Employers' members hoped that this case would come up again next year. It was a matter of some concern that since the Convention was ratified in 1952 the Government had not been able to implement it. They hoped that the assurances given would be carried out.

The Committee hoped that this highly important Convention could be fully implemented as soon as possible.

Honduras (ratification: 1956). The Government communicated the following information:

In view of the Committee of Experts' repeated observations, Decree No. 760 of 25 May 1979 has been issued (copy attached), amending various provisions of the Labour Code which were not in conformity with the letter and spirit of Convention No. 87.

Ireland (ratification: 1955). A Government representative complimented the Committee of Experts on its monitoring of the compliance of countries with obligations they had freely accepted.

In its report the Government had stated that it did not accept that it might be in breach of Articles 3, 8 and 10 of the Convention by reason of the effect of the Trade Dispute Act, 1906. The only substantive rights which these Articles provided were those mentioned in Article 3 and among those rights the only right to which the 1906 Act could be relevant was the right of workers' organisations to "organise their administration and activities". The only ground advanced by the 1906 Act was a limitation on the means of action open to the organisations "to defend the interests of their members". Although the Government did not accept that it was violating this Convention, it was considering amending this Act. It was not true, as stated in the observation, that work on amending the legislation was under way, but the views of the competent government department had been received and amendment was being considered.

The Workers' members welcomed the fact that consultations had already been held, and they hoped that the Government would not wait long before following up these consultations. They were concerned that no progress had yet been made and hoped the Government would make proposals as soon as possible.

The Workers' member of Ireland was disturbed that the Government had called into question the interpretation of this Convention by the Committee of Experts. It was important to recognise that the problem arose from the fact that some employees could be sued for damages if they took strike action, since they were not covered by the 1906 Act, and picketing was illegal for them. The Government had stated that Articles 3, 8 and 10 did not provide for the right to strike, but the Committee of Experts had often said that although there was no mention in the Convention of the right to strike, this right was implied for all employees except for those in the public service. They did not accept that the Committee of Experts was wrong in its interpretation.

He was also concerned at the Government's statement that it was considering whether to amend the Act though it was not yet proposing any amendments. In 1965 the Government had already accepted that this legislation needed to be changed, and in 1966 there had been a Bill containing amendments but this had lapsed in 1969. It was also accepted in 1975 and twice in 1977 that changes were necessary. It was disturbing that the Government was again considering whether amendments were necessary, when it had so often been accepted that they were necessary.

Employers' members stated that the statement by the Government representative provided no further information than what was noted in the report of the Committee of Experts. They could not comment on whether the 1906 Act was appropriate to the trade union situation in the country. They noted with concern that in examining whether the legislation should be amended the Government representative had stated that comments had been received from government departments, but no mention had been made of consultations on workers' and employers' organisations.

The Government representative stated that the normal procedure in enacting legislation was to canvass all government departments concerned in order to observe the principle of collective responsibility. Labour legislation would never be enacted without consulting the employers' and workers' organisations.

This question had long been a problem in Ireland since it involved an extension of the power to picket. Workers who were not regarded as working in trade and industry were not covered by the Trade Disputes Act, which gave protection against the consequence of trade union action. In Ireland pickets had great power in practice. The legal extension of the power to picket to further categories of workers had to be very carefully considered. Some years previously the Irish Congress of Trade Unions made an attempt to limit the powers of pickets, but the practice continued to be abused especially in unofficial action. The Committee should not get the impression that persons not in trade and industry were deprived of the power to strike or picket. For 13

weeks there had been a strike by the postal services, which were not covered by the Act.

He repeated that no draft legislation was yet being prepared, but was hopeful over the situation.

The Workers' members considered it a good sign that there was participation by workers' and employers' organisations in improving the situation, and hoped that progress would soon be made.

The Committee noted that tripartite discussions were continuing in the country, and hoped that these would lead to a satisfactory conclusion and would make it unnecessary for the Committee of Experts to make further comments.

Japan (ratification: 1965). The Government has communicated the following information:

1. *Permissible grounds for cancellation of the registration of an employees' organisation*

These grounds are provided for in section 108-3, paragraph 6, of the National Public Service Law and section 53, paragraph 6, of the Local Public Service Law, and, where any of the requirements as stated below have been met, there exist such grounds: (i) when a registered employees' organisation has ceased to meet the requirements for an "employees' organisation", such as the case where such an organisation has ceased to aim at maintaining and improving the conditions of work of its members; (ii) when a registered employees' organisation has ceased to meet the requirements for registration, such as the case where the adoption or revision of its constitution, election of officers and other similarly important actions have actually been decided without following democratic procedures provided for by law; (iii) when, in case a registered employees' organisation has made any change in its constitution or in the particulars set forth in the application for registration, it has failed to submit a report to this effect.

In this connection, the following points should be added: (i) cautious procedures including hearings to be conducted in advance in the case of cancellation of the registration are provided for by law; (ii) cancellation of the registration does not mean to deny the existence and function of the employees' organisation, but simply means that the employees' organisation can no longer be afforded the facilities specified by laws and regulations as an effect of registration; (iii) for the period of 30 years from the start of the registration system till now, there are no cases where the registration has been cancelled by the National Personnel Authority.

2. *Interpretation given in practice to the expression "persons making important administrative decisions or who participate in making such decisions"*

With regard to national public employees, in the case of employees in the ministry or agency proper, the expression "employees making important administrative decisions" means the administrative vice-minister, bureau director-generals, etc., who make decisions on important administrative measures, etc., in each ministry or agency, and the expression "employees in a managerial position who participate in making important administrative decisions" means bureau deputy director-generals, division directors, etc., who are in a managerial position and participate in making decisions on such important administrative measures, etc.

With regard to local public employees, division chiefs, section chiefs, etc., in each prefecture, city, town and village, belong to these categories of employees in a similar manner to the case of national public employees.

3. *Disciplinary sanctions*

Under the pay system of Japan according to which the pay of public employees is raised on the basis of a proper assessment of their job performance, it is unavoidable that those who were subjected to disciplinary sanctions for the reason of their having participated in a strike or for any other reasons may suffer from some disadvantages in a pay raise. However, in the case of public employees in the non-operational sector such as educational public personnel, if those who were disciplined are assessed as showing excellent job performance in subsequent years, the pay raise is naturally made.

4. *Procedures for guaranteeing conditions of service of employees*

With regard to public employees in the non-operational sector whose conditions of service are fixed by laws and regulations enacted by the Diet or the assembly of the local public body, there is a system under which the conditions of service of those employees are revised so as to bring them into accord with general conditions of society, by recommendation at an appropriate time of the National Personnel Authority or the Personnel Commission which are independent and impartial organs (such recommendation concerning the national public employees is submitted from the National Personnel Authority to the Diet and the Cabinet and one concerning the local public employees from the Personnel Commission of each local public body to the assembly and the head of the local public body concerned). For such a purpose, the National Personnel Authority and the Personnel Commission are always endeavouring to grasp the trend of working conditions in the private undertakings and so forth and at the same time receive frequently, from both parties of labour and management, their genuine demand and free opinions and takes their recommendation, taking into account various circumstances.

With regard to public employees in the operational sector, there is a system of conciliation, mediation, arbitration, etc., by the (tripartite) Koroi (the Public Corporation and National Enterprise Labour Relations Commission), etc., which are fair third-party organs.

Restrictions on the right to strike of the above categories of public employees are counterbalanced by these two types of compensatory measures which function effectively; this fact has been confirmed in a judgement rendered by the Supreme Court of Japan.

The Government further communicated the following information:

As regards the question of the right to organise of the fire defence personnel, the Government has made clear its basic position that it will study carefully this question in a longer-term perspective. In this connection, the Government envisages that, as a concrete step, it will continue studying this question at the Inter-Ministerial Conference on the Problems of Public Employees, hearing fully the opinions of the parties concerned.

Kuwait (ratification: 1961). The Government communicated the following information:

The Government will take account of the observations of the Committee of Experts and will spare no effort considering the amendment of the labour legislation with a view to meeting most of the Committee's comments on this Convention.

Liberia (ratification: 1962). A Government representative recalled that last year her Government had undertaken to work on a new Labour Code and that there would be a Tripartite Conference. Such a conference had been held. The draft code was being revised taking into account questions raised by the Tripartite Conference and legal experts, including the question relating to the application of Conventions Nos. 87 and 98. As for Convention No. 98 the Government had provided a list of union representation elections which had taken place in the past 12 months. Under the Liberian Constitution, ratified Conventions became law immediately without the need for implementing legislation, so that civil servants enjoyed the rights provided for in Conventions Nos. 87 and 98. For example, nurses, doctors and teachers in public service had organised in associations, which had bargained with the Government about salaries and other conditions.

The Workers' member of Liberia was not clear as to the nature of the collective bergaining of civil servants referred to by the Government representative. During the Tripartite Conference in Liberia the trade union had prepared papers on labour laws and industrial relations and had pointed out discrepancies in Liberian law with the Conventions in questions. The Tripartite Conference had considered, in particular, that the compulsory separation of agricultural and industrial workers should be reconsidered. The conclusions of the Tripartite Conference were now before the authorities. If taken into account in the Labour Code they would lead to conformity with these Conventions. He asked that the personal attention of the President of Liberia be drawn to the need to deal with this matter, and hoped that this would be the last occasion on which the case would require discussion by this Committee.

Another Government representative, in response to a question from the Employer' members, stated that a ratified Convention automatically became law in Liberia except where there was other contrary legislation; as no legislation prohibited civil servants from organising and collective bargaining, Convention No. 98 was part of Liberian law.

The Employers' members were glad to note that the Tripartite Conference had made certain recommendations. These questions had been outstanding for many years and they hoped the necessary legislation would soon be enacted.

The Workers' members hoped that the Tripartite Conference would produce tangible results, particularly as regards the main points concerning joint organisations of workers in agriculture and industry, workers in the public sector, interference of the authorities in trade union elections and protection against anti-union discrimination. They hoped that there would be changes in legislation and practice, and wondered whether the direct contact procedure could be of further assistance. The situation had remained unchanged for many years, although promises had been made and reports had not been sent. Their group would consider whether criterion 7 of the special list ought to be applied, but in the meantime proposed the inclusion in the Committee's report of a special paragraph concerning the application by Liberia of all the

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ILC, 68th Session, 1982, Report of the Committee on the Application of Standards, pp. 31/45-31/46 (Uruguay)

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The Government member of Bulgaria supported the opinion expressed by the Government representative of Poland.

The Government member of the USSR considered that there had been a frank and constructive exchange of views in the Committee. The conclusions which had been expressed by the Chairman were not the logical conclusions from the discussion. It was clear that the information provided by Poland had been frank, rich and original. The Committee had noted a series of measures which had been taken as well as the Government's policy of improving the situation, but still wanted to include in the report the conclusion that there had been a serious violation of the Convention. The Committee wants to include a special paragraph as a punishment for violation of the Convention despite a positive approach. The way the decision was taken was not a positive conclusion to a positive discussion.

The Government member of the Byelorussian SSR supported the statement by the Government member of the USSR.

The Government member of Ethiopia stated that her delegation disagreed with including a special paragraph in the report, as the Committee had heard of the progress achieved from the Government representatives and from the report of the representative of the Director-General. This should be reflected in the report and the Committee should continue to have a positive approach.

The Government member of the German Democratic Republic stated, on behalf of his delegation and that of Czechoslovakia, that he had reservations on the conclusions drawn with respect to the special paragraph. Conclusions of this kind did not correctly reflect the discussion which had taken place.

The Government members of Kuwait, Uganda and the Libyan Arab Jamahiriya also expressed their reservations about including a special paragraph in the report.

The Government members of Mongolia, Democratic Yemen, the Syrian Arab Republic and the Ukrainian SSR and the Workers' member of the German Democratic Republic, speaking also on behalf of the Workers' member of Czechoslovakia, Bulgaria, Mongolia and Hungary, stated that they could not accept the Committee's decision to have a special paragraph.

The Government member of Nigeria stated that he was not sure that if there was a vote on the issue in this Committee now, it would not differ from the result of the vote in the Governing Body. He would abstain. The Committee should not go to extremes immediately, but should wait to see what happened before the next Conference.

The Government member of Canada stated that his Govenment fully agreed with the decision taken by the majority of the Committee, which reflected faithfully what had been said. It showed a positive attitude towards the Government of Poland, which had provided detailed information on the situation with the greatest frankness and honesty. The decision was a good one, and he hoped that the Polish authorities would put it into effect and continue their attitude of co-operation with the ILO.

A Government representative of Poland, the Vice-Minister for Labour and Social Affairs, stated that the inclusion of a special paragraph in the report could be considered somewhat offensive to the Government. It could be interpreted as a personal defeat for all those who held dear the revival of the trade union movement in Poland. Taking account of the number of speakers who had disagreed with the decision to include a special paragraph in the report, he asked that the Committee consider the possibility of voting on the matter.

The spokesman for the Workers' members stated that a decision had already been taken by the Committee, and only those who had wished to abstain or to state that they disagreed had taken the floor later.

The CHAIRMAN considered that there had been a decision taken by a majority and that the speakers who took the floor after the decision had simply wished to express their reservations or disagreement. No one had asked for a vote immediately after the decision was announced.

The Government member of the USSR stated that he did not feel a decision had been taken. The Chairman had suggested a form of words for consideration, and immediately speakers began expressing their reservations. The Government of Poland had the right to ask for a vote.

The Government members of Czechoslovakia, the German Democratic Republic and Nigeria, as well as the Workers' member of the USSR, stated that they did not agree that a decision had been taken while the spokesmen for the Workers' and Employers' members, the Government members of Canada and the Netherlands and the Workers' member of Austria stated that they thought a decision had been taken.

The sitting was adjourned briefly, after which the CHAIRMAN stated that he had consulted with the Officers of the Committee, and that they were in unanimous agreement that a decision had been taken in conformity with the usual procedure of the Committee. As a personal proposal, he suggested, however, that as an exception to the normal procedure the text of the conclusions that would appear as a special paragraph in the report would be submitted to the Committee the following morning. This text should not be subject to correction, and if after examining it the Committee still wished to have a vote it could do so the same afternoon.

The spokesmen for the Workers' and Employers' members supported this proposal, emphasising that the subject would not be reopened for discussion and that any vote which might take place should be only on the question of whether the text submitted to the Committee should take the form of a special paragraph.

The Government member of Canada also agreed with the proposal. He stated that this procedure should not constitute a precedent for the Committee, and that it should be clearly understood that any vote be simply on the inclusion of a special paragraph and that the debate should not be reopened.

The proposal made by the CHAIRMAN was adopted.

At its next sitting, the Committee proceeded to a vote on whether the draft conclusions proposed by the Chairman should be included in the report as a special paragraph.

The results of the vote were 68,981 - 30,838, with 5,824 abstentions. The Committee thus decided to include a special paragraph in its report on the application of Convention No. 87 by Poland.

Uruguay (ratification: 1954). A Government representative made the following statement:

He welcomed the opportunity given by the Committee to discuss developments in the application of the Convention. Uruguay had had difficulties in fully applying the Convention but his Government had never ceased to demonstrate its intention of normalising trade union activity by legislation which would take due account of the international obligations of Uruguay by observing the right of employers and workers and the community. Thus the law on occupational associations had been adopted. The most representative employers and workers organisations had been consulted at the preparatory stage. His country was in permanent contact with the ILO and especially the Freedom of Association Committee, which had correctly expressed satisfaction, together with the Governing Body, with the progress made by the adoption of the new law. Several direct contacts missions had taken place and had largely contributed to the solution of the problems: thus the Director-General in his report to the Conference mentioned the case of Uruguay with satisfaction noting that a law considerably improving previous provisions had been adopted following direct contacts. Paragraph 37 of the report of the Committee of Experts also noted with satisfaction Uruguay's adoption of this law following direct contacts, thus improving considerably the previous provisions. Also paragraph 92 of the report listed cases of "satisfaction", i.e. progress made in legislation or practice following observations of the Committee of Experts as including Uruguay as regards the present Convention. Having adopted the law in question his Government had made regulations to guarantee its practical application; the registration system for trade unions was functioning and the number of requests for registration was now over one hundred and fifty.

The Workers' members stated that this case placed them in an uncomfortable position: the report of the Director-General and the report of the Committee of Experts described this as a case of progress following direct contacts, but in practice, serious problems still existed. The new legislation should be welcomed by the workers, but despite improvements on paper, there were serious shortcomings as regards freeing imprisoned trade unionists; and why were so many trade union leaders still in exile? Some trade union organisations in Uruguay considered that the new legislation and implementing regulations were far too limited; it appeared that anti-union repression still existed. The law was one thing, its application was another and the improvement should be practical too. The Freedom of Association Committee of the Governing Body in its report expressed the hope that measures would be taken to apply the Convention fully. While the Workers' members welcomed the the legislative changes made they remained concerned as to measures for practical application and hoped that the consequences of previous restrictions would be removed.

The Employers' members recalled that they had not wished to include the present case on the list of cases for discussion in the Committee. There did not appear to be sufficiently precise information to form an opinion on the new legislation and its implications, and in any event this would be the role of the Committee of Experts. In this regard the Committee of Experts noted gaps in the legislation, particularly concerning the question of eligibility of trade union leaders and the fact that occupational

associations had no right to represent their members in court. These were serious shortcomings. The Government had also indicated that it would regulate the right to strike, and even though that was not expressly covered by any Convention it was a constant concern of the Freedom of Association Committee.

The Workers' member of Uruguay fully agreed with the remarks made by the Workers' and Employers' spokesmen. Trade union organisations in Uruguay had made observations on the new law particularly as regards the dispersement of central trade unions in the industrial sector. The present Convention was only a link in the chain of Conventions protecting trade union rights which included Conventions Nos. 98 and 151. He regretted that the implementing regulations had not been brought into force and that most workers by far were not unionised. The right to strike came under the Convention but the draft to regulate strikes was not yet before the legislature. Without the right to strike, trade unionism could not operate. There was not yet any official collective bargaining and his confederation had repeatedly said that it hoped for true collective bargaining. The Committee should express the hope that progress would continue to be made, that the right to join a union would be recognised for public officials and that the right to strike should be guaranteed.

The Workers' member of Italy recalled that trade union rights should be observed as an integral part of tripartism. The Uruguay workers had asked for a national tripartite committee to deal with questions of standards and ILO relations. The Government had not replied on this point. Was it because it was almost useless to have such a committee in a country where there was no freedom of association?

The Workers' member of Spain stated that the doubts raised had lead to the inclusion of Uruguay in the list of cases and called for comment. Although it could be argued that there had been an improvement in the legislation since the Occupational Associations Act had abolished the requirement of a statement of political allegiance for trade union officials, the situation was different when the Government had since issued Regulations on 12 October 1981, section 39(d) of which provided that no one "who has occupied a post of responsibility in an organisation declared by law to be illegal" may be a trade union official. As the National Labour Convention (CNT) had been declared illegal, this excluded almost all trade unionists of the possibility of being an official and deprived workers of the freedom to elect their own representatives. Institutional Act No. 7 of 27 June 1977 required all workers in the public sector to make a declaration of their loyalty to the representative republican system of government. Since the Government could repeal or amend the Constitution by "institutional acts", it was very hard to subscribe to a system of government when the Constitution or a law enacted by Parliament could be repealed at any time. Nor had there been any real measures as regards arbitrary detentions for trade union reasons, as the resolutions of the Human Rights Committee last April showed, when it was stated in particular that Alberto Altesor had not had a fair trial and that the detention of Mario Teti was the subject of physical attacks and death threats, along with their trade unionists.

The Workers' member of the Netherlands had noted from reports received from various sources on Latin America that the situation in Uruguay as regards trade unions was the most difficult. He was highly surprised that the Committee of Experts had listed this case as a case of progress in its report. Improvement in legislation should not be the only yardstick used by the experts to identify progress. In fact, if legislation improved and practice remained as bad as it was, the gap between law and practice widening, one could quite logically argue that in fact the situation had deteriorated. Although the facts were wanting in the report of the Committee of Experts on the present case, as the Employers' spokesman had said, that also applied to the case of Poland which the Committee had just discussed at length. The Government should give clear information, figures and statistics and replies to the questions posed in the Committee. Otherwise the Committee should note that legislation had improved but that the practice was consistently bad and that the gap between the two had widened in the last year.

The Workers' member of Mali recalled that the case of Uruguay had been examined by the Committee on the request of the Workers' group. He wondered why the Committee on Freedom of Association and the Governing Body had not studied it of their own accord. There were more exiles from Uruguay than any other country. As for public employees and civil servants, concerning whom the right to organise is at issue in Uruguay, the situation of this category of employees with regard to freedom of association should be examined in all countries. The case of Uruguay, which is not unique, should not be only a pretext for statements but should also be the object of measures by the Committee.

The Workers' member of Austria recalled that the case had been dealt with in 1978 and 1979 and a special paragraph had even been included on it. A regulation on the application of the Act on occupational associations had been promulgated in October 1981, but the Committee of Experts had observed that neither this law nor its regulation completely covered the question of application of Convention No. 87. Unless the Government delegate was able to supply sufficient additional explanations, Uruguay could certainly not be considered a case of progress.

The Workers' member of the USSR had already pointed out that the Committee of Experts should not base itself on one-sided information, in this case coming from the Government. In this respect this case was a blatant one in so far as the Committee of Experts had noted some progress from the point of view of legislation, which, however, camouflaged persistent violations of trade union rights. He did not know the contents of the Act of 1981 but noted that it had been adopted without consultation with real representatives of the workers, who were not satisfied with it. The Act did not provide for the right to strike and did not conform to Convention No. 87. Over 60,000 people had been arrested in Uruguay in recent years and trade union leaders, many of them eminent, had been imprisoned. One of them died in prison in 1981. Sixty-thousand persons had left the country. Flagrant violation of trade union rights in Uruguay should be condemned. The Government could not content itself with supplying information; it should review labour laws in their entirety and restore trade union rights.

The Government member of the Netherlands noted with satisfaction the fact that measures had been taken by the Government and the statement that the right to strike would be regulated in the near future. Full application of Convention No. 87 was thus no longer hampered by legislation. She hoped that the Government would not confine itself to legislative measures but would also implement the legislation.

The Workers' member of Angola stressed the deplorable situation of the trade unions in Uruguay and pointed out the inadequate implementation of adopted legislation according to the report of the Committee of Experts. He wished to believe that efforts were being made by the Government to settle the situation, but he wanted to know about prisoners and to receive information about exiles.

The Workers' member of Liberia endorsed the previous statement.

The Government representative recalled that in the general discussion the overwhelming majority of the Committee had paid tribute to the independence, objectivity and impartiality of the Committee of Experts. His Government naturally shared the viewpoint of the majority that the work of the Committee of Experts was a fundamental part of the activities of the ILO. The comments of the latter should therefore elicit the greatest attention.

Concerning release of detained trade unionists, it was impossible for the present Committee to analyse individual cases of persons concerned. Such cases had been brought before the Committee on Freedom of Association. In this respect his Government had not changed its position, namely that no one had been arrested in Uruguay for trade union activities. During the last direct contact mission in 1981, the representative of the Director-General had been able to fulfil his intention of interviewing several imprisoned persons in the absence of witnesses and had studied court indictments against conspirators. He was thus able to note that they had not been arrested for trade union activities. In this connection he referred to paragraphs 50 and following of the 209th Report of the Committee on Freedom of Association (May-June 1981).

Documents had been mentioned as having been received by the Workers' group from certain workers concerning cases of repression of trade unionists. But perhaps the Government should be informed in detail of the serious accusations before being asked to reply to them. In addition clarification had been requested by the Employers' group on the scope of section 12 *(b)* of Decree No. 513/981. There was a traditional distinction in labour law between individual and collective disputes. Collective disputes were resolved by special machinery or collective bargaining and not in the courts. If a worker appealed before a court because of an individual dispute, he was represented free of charge, if he so wished, by a lawyer of the Ministry of Labour, but in this case the trade union, as an institution of collective law, could not intervene. It was therefore impossible for a trade union to appear in court on behalf of one of its members in order to resolve an individual dispute.

Concerning the right to organise of public employees, certain speakers had referred to Convention No. 151, but the latter did not concern trade union rights of public employees; this was recognised in Convention No. 87. In addition, Convention No. 151 was not relevant in the present case because it had not been ratified by Uruguay. In accordance with section 27 of the Act on Public Servants of 1943, public servants had the right to form trade unions, and the Chairman of the most representative trade union

organisation in his country was a public servant. Concerning the right to strike, he reaffirmed the Government's intention to regulate in the near future the exercise of this right, which had been recognised for over forty years in the Constitution. It was surprising that the Committee of Experts expressed the hope that this Regulation would contain no provisions in contradiction to Convention No. 87, because neither the latter nor any other ILO Convention dealt with the right to strike. The Committee on Freedom of Association and the Committee of Experts had certainly drawn up a series of principles on the right to strike, but only the personal value of the members of these institutions should command respect. It was the Uruguyan Constitution which would be applied.

Following the statement of the Workers' member of Uruguay during discussion of the general survey, he pointed out that his country, which had not ratified Convention No. 144, nevertheless attached fundamental importance to tripartism and regularly consulted occupational organisations on matters relating to the ILO. It was true that the General Confederation of Workers in Uruguay had called for a tripartite committee for the ILO, and the proposal was being thoroughly studied by the Government.

The problem of the hierarchy of legal rules had been highlighted. Every lawyer would agree that a decree should respect the law, and the law should respect the Constitution, and a regulation could not set up provisions which were not contained in the law. Section 5 of Act No. 15137, drafted after the direct contacts mission to Uruguay, authorised a regulation to determine the conditions for trade union leadership. In this respect, the regulation only developed the mandate contained in the law.

Concerning the request made to the Government to supply figures to prove that progress was being made in the situation of trade unions, the Committee had always worked on the basis of the report of the Committee of Experts. Individual cases were to be examined by the Committee on Freedom of Association and were not within the competence of the present Committee. The speaker referred these to the Committee on Freedom of Association which was still examining certain cases and had closed others. Several Workers' members had expressed legitimate concern that progress in legislation had only been achieved on paper. A law and its application could diverge but this was true in all countries. It was, however, a matter of good faith, and the Government's intention was to apply the law and its regulation in practice, and to take into account the comments made by the Committee. His Government had always proved its good faith by replying to comments, accepting direct contacts and modifying legislation. It was applying the law in a sufficient, loyal and correct manner.

The Workers' members recognised the Government's regular contribution to discussion with the ILO and its efforts to improve the situation. A law and its application would of course diverge, but this could happen in any country. At all events, this would be impossible. The Committee of Experts had noted improvements in legislation but had also expressed the wish for further changes in the latter. The supervisory machinery included the Committee of Experts, the Committee on Freedom of Association and the present Committee, and also had at its disposal direct contacts and other methods. All these bodies had to collaborate in perfect harmony. As the Committee of Experts and the Committee on Freedom of Association had pointed out, there still remained points to be settled, in spite of the improvements which had been achieved. The Workers' members recognised these improvements but wished efforts to be made towards full application of the Convention and towards achievement of tripartism at the national level. Without reopening the debate on prisoners, they noted that as a rule no one was arrested in any country for trade union activities. The Workers' members would continue to refer to information from workers' organisations in order to ascertain how far the Convention was really being applied. Before speaking of a real case of progress, the Committee should wait until the laws and their application were in conformity with each other.

The Employers' members thanked the Government representative for his explanations, although he had not replied to the question asked by the Committee of Experts concerning provisions which remained in contradiction to the Convention, and which the Committee of Experts requested to be brought into line with the Convention. Certainly, the law and its practice differed in a number of countries. They did not see why a worker, for example in a case of dismissal, should be denied the right to call in a union lawyer to defend him as this was an individual dispute arising out of industrial relations. The requirement of an interval that must elapse before re-election to trade union leadership deprived trade unions of sufficient continuity in their leadership and thus hampered their activity. They wished the Government delegate to assure the Committee that the observation of the Committee of Experts would be carried out, that the Government would continue the discussion and that the points which had not yet been settled would be communicated to them. It was not enough to enact a new law; it had to be applied. They recalled that the Committee on Freedom of Association would consider the case of Uruguay again next year.

The Committee took note of the information supplied by the Government delegate and of the replies provided to questions which had been asked. It recognised that important progress had been made at the legislative level but was concerned about certain aspects relating to practical application of the legislation. It hoped that those problems of regulation and legislation which still remained, would be settled as soon as possible, so that the Committee would be able to note the following year that the situation, both de jure and de facto, was in full conformity with Convention No. 87.

USSR (ratification: 1956). The Government representative made the following statement:

When the Convention was ratified in 1956, the Government had assumed that the rights enjoyed by the trade unions in the country were far broader than those provided under this Convention. The role and importance of the trade unions was very great in the country. It assumed that as the country continued to develop, the role of the trade unions in running the society would also expand, and this forecast had turned out to be accurate. Trade unions actively participated in all progressive decisions and in everything which contributed to progress. Their role was defined in article 7 of the 1977 Constitution, which was the first article in the section dealing with the country's social structure and system. This showed their importance and confirmed their high prestige. Almost 98 per cent of the workers were trade union members. The legislation guaranteed and secured trade union rights and their independence from any other State body. Section 95 of the Fundamental Principles of Labour Legislation provided that trade unions operate on the basis of their own statutes, and they did not need to register with any State body. This was in accordance with Convention No. 87.

In its replies to the comments of the Committee of Experts, the Government had pointed out more than once that the basis of Soviet society was joint ownership of the means of of production. This fact alone explained why the structure of the trade union movement was different from that in other countries where there were different classes in society and why there was no need for plurality of trade unions. However, the Committee of Experts ignored in its latest comments the absence of any legislation prohibiting the establishment of further trade unions. Trade union pluralism would be an anachronism in the present conditions of the country. In 1918, the unions themselves, without any legislation imposed from above, had decided to unite. The Committee of Experts was seeking to improve its conception of trade unionism; it was interfering in the internal affairs of the country, and making comments concerning its Constitution, which was the expression of the sovereign will of the people. In this instance, as in others, when the position of the Committee of Experts was criticised by Members of the ILO, the said Committee reverted to a purely formal legal approach concerning the situation in these countries, and exposed itself to criticism.

Convention No. 87 did not reflect the real state of affairs in the present world. Her country hoped that the special role and importance of trade unions in socialist society would be reflected in a new instrument on trade union rights, which would replace Convention No. 87. She hoped other Members shared her Government's concept that a legal system could only be understood in its own social context.

The comments of the Committee of Experts concerning the role of the Communist Party in trade unions were also relevant to the Constitution of the USSR and its social system. Although it considered that this question was beyond the scope of the Convention, the Government had furnished detailed explanations, and the Committee of Experts said it had taken note of these explanations, but the questions asked, did not indicate that it had. The Communist Party, under the Constitution determined the over-all development prospects of the country and laid down the strategy for its domestic and foreign policy. It expressed the will of the people.This found its legal expression in legislation and other legal instruments, which were adopted in accordance with the existing democratic procedure for the preparation and adoption of legislation. The trade unions and other organisations participated at every stage of the legislative procedure. This democratic procedure implemented the decisions of the Party. These matters were not covered by Convention No. 87. No concrete example of violation or of non-compliance of national law with Convention No. 87 had been cited. The situation in the USSR reflected quite a different system of legal thinking, which was shared by a whole group of Members of the ILO. Although Convention No. 87 had been drawn up in her country's absence, it had ratified the Convention and complied with its requirements. Continuing

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Conventions and Recommendations

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8. The principles for the representation of state employees mentioned in section 16 of the Trade Union Act are laid down in the Act concerning employees of the State administration of 16 September 1982. Under section 40 of this Act employees in state administration have the right to join the union of employees in state administration except: (i) employees in highly responsible posts whose activities are generally considered to be linked to policy making or management; (ii) employees engaged largely in confidential work. These employees may all create workers' councils, like other non-unionsed workers. The councils have to protect and represent the social and occupational interests of the workers forming them in relation to the management of the administration. The workers' councils are based on this Act and their own constitutions (section 41 of the Act). The administration management and higher bodies must for their part create favourable conditions for the workers' councils to fulfil their statutory tasks, examine the motions presented, and inform the councils of the solutions found (section 42 of the Act).

The principles and the extent of the co-operation between the managements and the workers' councils are laid down in Council of Ministers' Order of 8 November 1982. Under paragraph 2 of the Order, the management must consult the workers' council on questions of the whole of the staff represented, including: employment and the realisation of the rights and obligations under the work relation; remuneration and payments in favour of workers and financial policy; conditions of work, hygiene and safety; protection of workers' health and rest; social payments and housing questions. The opinion of the workers' council is also asked for in questions of the ceasing of the work relationship and the assessment of qualifications, and decisions on payments for premiums or merit; sharing and use of premium funds; fixing hours of work and leave rosters; improving occupational qualifications.

9. As regards interpretation of section 37(1) of the Trade Union Act (possible protest strikes on questions going beyond the undertaking, occupation or industrial sector) the following explanation is given: – the Trade Union Act lays down other forms of protest than strikes (without specifying them), but strikes going beyond the undertaking, occupation or industrial sector are not allowed if there are political aims; however, the Act does not exclude other forms of protest so long as they do not transgress public order or the principle of social co-existence: – in the light of the Act, the rights of unions to organise protest actions are understood as a means of defending collective economic and social interests. The Act does not prohibit actions for the defence of workers' interests when they go beyond the undertaking, occupation or industrial sector. Detailed regulation of protest actions other than strikes is made by constitutional provisions and their permissible aims will be interpreted by the Trade Union Act, taking account of the position of the Committee of Experts.

10. Under the Trade Union Act section 54, the assets of the trade union central and the trade unions have been temporarily placed under the control of a provisional body whose organisation and functions are fixed by the order of the Council of Ministers of 15 October 1982 on the temporary administration of the assets of former trade unions, in conformity with the Act's authorisation. To this end, a Commission for the administration of trade unions' assets was formed. There are 11 people on it: the chairman and 5 union representatives (including "Solidarity") and government bodies. The Commission undertook the temporary administration of the assets of the former trade union central and the assets of all the other unions existing before the Trade Union Act came into force.

The assets of plant-level unions stayed under the administration of the chiefs of the enterprises who transmit the union assets to the new plant unions as the statutory trade union leadership is formed. These questions are governed by the Council of Ministers' Order of 27 December 1982 on the principles and modalities of transfer of the assets of former plant level union organisations. As for the taking of trade union assets by provisional administrators at higher than plant level, the Commission called 24 officers to administer the assets of former union centrals and respective union branches. The Commission's role is only administrative, i.e. its work is only what is indispensable for the conservation of assets in a good state and in conformity with the functions and the destination of their respective parts. All expenses connected with the administration of the assets are covered by the State.

In their more than 100 years' activity the unions have accumulated durable property including 41 sanatoriums, 88 rest centres, over 50 administrative buildings, hotels and lodgings. The unions formed after August 1980 had as yet no significant durable property. "Solidarity's" property consisted mainly of means of communication, reproduction equipment and a large number of publishing facilities, office equipment and small bank accounts. In view of the absence of inventories or a complete register of accounts, there are great difficulties in taking over these assets.

The Commission had taken control of all the assets until the end of April 1983, the value of the durables being: branch unions –over 3,719,228,000 zlotys; the "Solidarity" union–more than 36,900,000 zlotys. In addition to the work of taking over and conserving assets, the Commission organises and oversees the activities of sanatoriums and rest centres, makes investments and renovations in them, makes sure the houses of culture function properly, as well as hotels, clubs, administrative buildings, etc.

11. As regards the management under section 20 of the Trade Union Act, the creation of unions and inter-union organisations is allowed, due regard being had to other legal provisions. As the unions are at the initial stage of organising, the question as to their fields of action cannot yet be judged. This matter will be governed also in the appropriate union constitutions.

Syrian Arab Republic (ratification: 1960). The Government has communicated the following information:

The prohibition of strikes laid down by section 160 of the Agricultural Labour Code, No. 134 of 1958, is justified by the fact that a strike in agricultural activities could result in tremendous damages and considerable losses. Nevertheless a draft amendment of the Agricultural Labour Code has been drawn up, in which the said section 160 is deleted. It has been submitted to the competent authority.

As regards Legislative Decree No. 84 fo 1968 on trade union organisation, certain sections of it have been amended by Legislative Decree No. 30, promulgated on 17 September 1982.

Legislative Decree No. 250 applies to small-scale craftsmen, whose particular circumstances make it necessary to set up associations, federations and confederations of craftsmen. While craftsmen and larger employers are not covered by the provisions of this Decree, this does not mean that they are deprived of the right to set up associations which are appropriate for them, or that the legislative decree prevents them from exercising this right.

As regards management of the assets of associations, these are managed in accordance with the provisions of their financial statutes, which are promulgated by the Minister of Social Affairs and Labour in agreement with the Minister of Finance. The fact that associations may accept gifts and legacies only with the authorisation of the Minister works to the advantage of the associations, as gifts and legacies are governed by laws and in many cases may come with conditions which run contrary to the objectives of the association. Likewise, in the event of transfer of the assets of an association, authorisation obtained in advance from the Ministry may prevent improper use of the assets.

Concerning the resources of federations and of the confederation, it is up to the association itself, when drafting its financial statutes, to fix the percentage it considers adequate.

As regards the nature and role of the peasants' association, it is a popular economic trade union organisation which carries on its activity in all areas of peasant trade union activity and production-related activity.

Trinidad and Tobago (ratification: 1963). The Government has indicated that action has commenced on the amendment of the Prison Service Act, the Fire Service Act and the Civil Service Act. An amendment to section 65 of the Industrial Relations Act is also under consideration.

Uruguay (ratification: 1954). A Government representative made the following statement:

Developments in Uruguay as regards the application of Convention No. 87 demonstrated the effectiveness of constructive dialogue with the ILO. It had been inevitable a few years ago in conditions of very serious terrorism that difficulties should arise in the application of the Convention. To deal with them the Government took measures to consult the most representative organisations of workers and employers on a Bill concerning occupational organisations; it consulted the ILO also on this Bill to obtain its comments; and it accepted three direct contacts missions during which the representative of the Director-General of the ILO was given every opportunity to visit the places and persons concerned. When the Bill became law the ILO Committee on Freedom of Association noted with satisfaction important improvements over the original draft in ensuring conformity with the Convention. The Governing Body had endorsed these findings and the Committee of Experts noted with satisfaction the enactment of the new law and included the case of Uruguay, Convention No. 87, in its list of cases of progress. The Conference Committee also noted with satisfaction that following the direct contacts new legislation had considerably improved the prevailing situation, and the Director-General's Report noted with satisfaction the progress made in implementing the Convention.

Consequently the Government had received continuing co-operation from the ILO, which had helped in overcoming most of the problem raised, and the Government's attitude had helped to

solve the trade union problem in the interests of employers and workers and in the general interest; Uruguay had made progress as regards the Convention. There were, however, difficulties despite this progress, and the Committee of Experts had referred to several points in need of attention to ensure full application of the Convention.

The Workers' member of Uruguay requested information from the Government representative as regards the right of organisation of public officials and whether Convention No. 151 would be ratified by Uruguay. He asked for information on the present situation of trade union leaders. He wished to know when the right to strike would be regulated in accordance with the provisions of the Convention and the national Constitution, whether it were possible to establish national trade union organisations, and what would be done to grant legal personality to trade unions more quickly.

The spokesman for the Workers' members stated that the co-operation and assistance of the ILO had led to improvements in the legislation, and welcomed the Government's positive attitude, but several points of practical application were still of concern, as pointed out by the Committee of Experts. Many trade unionists remained in detention or in exile and the question was whether measures would be taken to bring the *de facto* situation into line with the *de jure* situation.

The Employers' members welcomed the progress noted by the Committee of Experts following the co-operation between the Government and the ILO in recent years and in particular thanks to direct contacts. The Government representative had recognised the difficulties and his acceptance of discussion based on the comments of the Committee of Experts was to be welcomed. However, there should be improvements in respect of the continuing limitation on workers belonging to different undertakings or branches of activity forming a single basic organisation, as well as concerning the long waiting period for registration of an occupational association, under Decree No. 640/973 and the immediate re-election of trade union leaders was prohibited. The Government should indicate what it intended to do to bring this legislation into conformity with the Convention, and that it could give some idea of when these measures might be taken.

The Government member of the United States indicated that the dialogue and discussion in the present case contrasted with certain others, and this was to the credit of the Government of Uruguay. He also noted that the Committee of Experts had noted progress in the case of Uruguay on three Conventions in 1983 and on Convention No. 87 in 1982, and that this gave him confidence that Uruguay would continue to co-operate with the ILO and to make an effort to resolve the remaining difficulties.

The Workers' member of Ecuador stated that the Government was violating the Convention. It was presently only authorising trade union organisations on a provisional basis, trade unionists were forbidden to carry on their activities and the police were continually acting to deprive workers and their leaders of the right of association. The trade union rights of public officials should be explained as well as the right to strike, which had been nullified and suppressed as a court martial crime for ten years contrary to the Constitution of Uruguay and in violation of the Convention. The situation was also unclear as regards anti-union discrimination although the Government said that there was protection against discrimination in employment. Finally, since the military dictatorship had been in power many trade unionists were in prison and even tortured.

The Workers' member of the Netherlands supported the statement of the Workers' member of Ecuador. As regards the statement of the Government member of the United States, there were two levels of dialogue to be distinguished, one concerning the law and the other concerning practice. There were doubts on this question and it should be stressed that the Government ought to enter into a dialogue also in its own country, particularly with trade unionists now in prison and deprived of basic freedoms.

The Workers' member of Austria stated that the present case had been discussed frequently. In 1978 and 1979 there had been a special paragraph in the Committee's report concerning failure to apply the Convention and in 1981 and 1982 the legislative and practical application of the Convention had been discussed. The Government representative should give more information on the points raised by the Committee of Experts and other speakers in the present Committee and indicate how such consideration was being given to them. All member States of the ILO were under an obligation to co-operate with the ILO, and the Government's position should be seen in this light.

The Workers' member of Panama supported the Workers' member of Ecuador in his statement: the Government representative should indicate the representative organisations consulted on the enactment of the law on occupational associations. In this regard, he wondered about the National Congress of Workers (CNT); however, it had been sent into exile by military decree.

The Workers' member of Colombia supported the previous Workers' members who had spoken and did not agree with the view that the Government should be given credit for its statement. She wondered when trade union freedoms would be observed in Uruguay since there were still many union leaders detained, even, in some cases, when they had served their sentences. Thousands of workers and union leaders had been exiled and could not contribute to the trade union movement. There could be no trade union freedom if human rights were not observed in the country. When would the comrades detained for ten years be set free? The Government should respond in a concrete manner.

The Workers' member of Mali said that mere words were insufficient to solve problems of the practical application of Conventions and concrete information should be given in particular as regards trade unionists in exile.

The Workers' member of the USSR fully agreed with the statements of the other Workers' members. The Workers' group was unanimous in demanding that the Government restore the previous situation regarding freedom of association, free imprisoned trade unionists, and restore democracy.

The Government representative stated that the right of public officials to form trade unions had been recognised since 1943 by section 1 of Legislative Decree No. 10388 of 13 February 1943. The Workers' delegate to the Conference last year had been a public official. The Government's obligation to submit Convention No. 151 to the legislative authority had been fulfilled and it was up to the latter to make a decision on the question. Trade unions were recognised in national legislation and the Government could not prevent the occasional dismissal or disciplining of a trade union leader; what it could do was to compel an undertaking to re-employ persons concerned when they had been demonstrated to have been acting for trade union reasons. The right to strike had been laid down 40 years ago in the Constitution, which stated that a law would be enacted on the subject. This provision of the Constitution would be fulfilled and a bill on the right to strike was under preparation. The Committee of Experts expressed the hope that this text would not contain provisions conflicting with the Convention, but there was no Article of the Convention which referred to the right to strike. As regards delays in granting legal personality to trade unions, the Committee of Experts had not considered that the Convention was infringed, but stated only that it would be desirable to make the waiting period shorter. In view of the large number of organisations the Ministry of Labour had not been able to deal quickly enough with this matter, but his Government undertook to solve the administrative problems. The Government had responded to the requests of the Committee on Freedom of Association concerning trade unionists in prison and had almost resolved the question. Although it was not denied that some persons were in prison, who had at the same time exercised trade union functions, it was not accepted that the reasons were to do with trade unionism. The three direct contacts missions had been given full facilities to visit persons and places without restrictions and in the Director-General's Report to the 209th Session of the Governing Body it was indicated that the reasons for detaining these persons were not connected with trade union activities. These persons would be freed when they had finished their sentences. As regards re-election of union leaders, the Committee on Freedom of Association had stated that it was the absolute prohibition which was contrary to Convention No. 87, whilst in Uruguay there was only a reasonable limit based on the interests of workers and democratic principles, so that after being elected for the first time there must be a transitional waiting period before a further election. Moreover, it was incorrect to state that organisations which had been registered were subject to provisional authorisation in order to function on the ground that there existed a right of veto of trade union leaders on the part of the authorities.

As regards the questions raised, the occupational organisations consulted on the preparation of the Act respecting occupational associations were the same as those sending workers' representatives to the ILO Conference in recent years, without which the cases questioning their representativeness would have succeeded. The opinions which had given credit to the Government for progress in the application of the Convention were the impartial ones of the Committee on Freedom of Association, the Governing Body, the present Committee, the Conference and the Director-General of the ILO. There had been a great deal of progress in legislation and it was not denied that there were some difficulties in practice, although clear progress had been made. The Government would continue its effort to ensure practical application of the Convention in order to follow through its effort as regards legislation.

The Workers' member of Denmark requested a clearer response from the Government as regards the right to strike. It was incorrect to state that the right to strike was not covered by the Convention, as shown, for example, in the General Survey of the

Committee of Experts this year. He wondered why this right could not be exercised freely if it was recognised in the national Constitution.

The Government representative stated that article 57 of the Constitution recognised the right to strike and envisaged legislation to regulate it, and the legislation under consideration would do so.

The Employers' members stated that application of the Convention had to be at once on the legal, administrative and practical levels. The Government representative had recognised that there was progress in applying the Convention, and it was to be hoped that the comments of the Committee of Experts would be taken into account so that there would be full compliance with the Convention in practice as well as legislation and further progress would be made next year.

The Workers' spokesman stressed that a number of members of the Workers' group had voiced concern about the situation as regards the application of the Convention, and he welcomed the fact that the Government recognised that much remained to be done. The Workers' members welcomed the progress and noted the provisions referred to by the Government. They also noted that there was a bill to deal with the right to strike. They hoped the Government would ensure compliance with the comments of the Committee of Experts, and recalled that once legislation was adopted it would have to be applied as well.

The Workers' member of Ecuador stated that the Committee should take a decision noting that the Government of Uruguay was violating Convention No. 87. There could be no satisfaction as to the information given by the Government representative and the expression of good intentions did not justify violation of the Convention. The right to strike was indeed covered by the Convention and the national Constitution guaranteed it, although for ten years there had been no enactment on the right to strike which had existed before the dictatorship. The Government representative had recognised that trade unionists were in prison although he had stated that they were not there for trade union reasons; this, however, was merely an excuse for violation of the Convention. The speaker named a number of trade union leaders being detained and referred to a list of more than 70 such leaders in prison. Furthermore, many very valiant trade union leaders were in exile and thus excluded from the trade union movement and thus prevented from playing a leading role in the working class. The Government could demonstrate its good will as regards the Convention by offering formally to free imprisoned trade unionists and to allow the return of the exiled leaders; a simple expression of good intention was insufficient. The Government representative's reply on the question of public officials' right to organise was not satisfactory. Measures should be taken to restore the situation existing before the military dictatorship.

The Workers' member of Cuba associated himself with the statement of the Workers' member of Ecuador. On 1 May 1983, 200,000 people demonstrated against ten years of dictatorship, which represented a defeat for it. Further, there had been a call for a general amnesty by a large number of trade union organisations, since many union leaders and members were in prison.

The Government representative wondered how the May Day celebrations, which were authorised by the Government and where there was apparently very large participation, could be contrary to the application of the Convention.

The Committee welcomed the dialogue which had been maintained by the Government concerning the Convention. Like the Committee of Experts, it noted that there had been progress as regards legislation following direct contacts. Despite the partial progress made, the Committee considered that further progress was possible and it considered that there were serious reasons for concern regarding the right of association of public officials, for example, and the exercise of the right to strike, the legal recognition of union organisations and as regards freeing of detained union leaders. The Committee expressed the hope that further progress would be made to guarantee conformity of legislation and practice with the Convention. The Committee called for a gesture of good will by the Government to contribute to improvement in the situation by freeing detained union leaders and members.

USSR (ratification: 1956). A Government representative made the following statement:

His Government had supplied all the reports due for the period ending 30 June 1982 including that on the present Convention, which continued to be fully applied. Unfortunately the interpretation given by the Committee of Experts to the situation in various countries was not always an objective evaluation of the good will and the information provided by governments, and did not assist in understanding the socio-economic realities and legal characteristics of the application of the Convention in socialist countries. There realities should not be ignored as they were one of the most important aspects of the experience of member States of the ILO. Furthermore the report of the Committee of Experts contained certain disappointing elements because the questions involved were not only formal legal ones but profound problems of socio-political structure relating to the assessment of different legal values.

For example, the 17th Session of the Trade Union Congress in the USSR in March 1983 was of historical importance, gathering together representatives of all strata of society–workers, peasants and intelligentsia; the broadening of the social base of the trade unions involved the protection of the working class as a whole. Of 130 million trade union members, two-thirds were workers, 12 million were members of collective farms and 33 million were intellectual, engineering or technical workers, so that the trade unions covered the majority of workers in the country. There were 32 branches of trade unions and 172 country-wide bodies; some 25,000 republic and local trade union committees existed; more than 749,000 basic trade union organisations were at work covering 3 million categories of occupation. This was relevant to Convention No. 87 since it gave a fuller picture of trade union activities. The 1983 Congress dealt with the need for greater supervision by trade unions of government activities and those of economic units, based on the legal provisions in force. In its report, his Government had shown the co-operation between trade unions and Soviet authorities and various social organisations, which was useful to both sides. The legislation guaranteed freedom of activity of unions: the State could not interfere in their internal affairs and under the legislation trade unions adopted their own constitutions and did not have to be registered with state authorities. Section 95 of the Basic Labour Law also required state bodies and undertakings and organisations to co-operate fully with trade unions in their activities. Under section 96 of the same Law, the trade unions have the right to protect the interests of the workers in all respects.

The trade unions functioned on a basis of broad democracy: they elected their own leadership and delegates by secret ballot and decisions were taken by a majority. There was no limit to the right to free speech and criticism or to make proposals, and trade unions had the right to own property. All of this was fully in conformity with Articles 2, 3 and 4 of the Convention and trade union rights in Soviet Law went even further. For example, section 137 of the Penal Code of the Russian Federation and similar provisions in other republics laid down criminal responsibility for interference in trade union affairs. Trade unions had in law the right to ensure the observance of labour legislation and safety at work and the protection of social rights of the workers under section 96 of the Basic Labour Law; they were also involved in technical and legal labour inspection. Failures of safety at work were reviewed each year with works management and workers could not be dismissed without the agreement of the trade union committee, which also contributed to the resolution of labour disputes. The conclusion of collective agreements was one of the main functions of the trade unions also.

The ILO study of the trade union situation in the USSR in 1959 has noted the broad rights and democratic basis of the activities of Soviet trade unions, and these qualities had since improved under the new Soviet Constitution. The trade unions participated in the elaboration of social development plans for workers' collectives and state development planning. In this way the workers enjoyed the right of association in a realistic way in conditions of socialist construction.

The Committee of Experts had in the majority taken no notice of the practice and although they could find no precise basis for their observation of the implementation of Convention No. 87, they again returned to this matter. As regarded sections 7 and 230 of the Labour Code of the Russian Federation referred to by the Committee of Experts, the former related to the general principle laid down in section 6 of the Basic Laws of the USSR; it was unrelated to the question of trade union plurality but dealt with the conclusion of collective agreements and other activities; section 230 laid down the most important legal basis for the rights of trade union committees in undertakings and organisations and was not thus related to the present Convention. No provision of Soviet law laid down that there should be trade union unity or prohibited the founding of trade unions alongside those already existing, so that the Committee of Experts' observation on this point was without foundation.

It also appeared that the Committee of Experts was unsure of its own reasoning since it stated that "it appears to the Committee"; indeed there were no legal provisions on which the Committee of Experts' arguments could be based in this respect.

From a historical and socio-political point of view, it appeared that the Russian trade union movement had already evolved towards unity before the 1917 Octoober Revolution, and this was noted over 20 years ago in the ILO study referred to. The question of collective agreements between trade unions and undertakings

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United Kingdom (ratification: 1949). A Government represen-tative recalled the background to the observation in the Commit-tee of Experts' report: on 25 January 1984 the Foreign Secretary had informed Parliament that certificates had been signed under the relevant employment protection legislation exempting the civil service staff at the Government Communications Headquarters (GCHQ)–a government establishment staffed by civil servants

engaged in intelligence work of crucial importance for national security which had to be carried on without any interruption whatsoever–from the provisions and, in one respect, from the protection of that legislation. At the same time, the Foreign Secretary had announced that new conditions of employment would be introduced for the staff concerned, namely that they were only allowed to belong to a staff association confined to members of GCHQ and were no longer allowed to continue as members of trade unions with a membership extending to other parts of the public or private sector. The Foreign Secretary had made it clear that the Government had reached its decision following long and careful consideration of all aspects, including the need to avoid a repetition of the industrial action which had taken place at GCHQ between 1979 and 1981 as a result of general disputes over pay and other issues. In the Government's view, the action of the civil service union in selecting GCHQ for strike action in furtherance of general disputes faced GCHQ staff with a severe conflict of loyalties. The Government had considered very carefully its obligations under ILO Conventions before taking action. His Government had concluded that there was no infringement of these obligations and it remained firmly of that view.

After the Government's announcement, the civil service unions and the Trades Union Congress (TUC) had made vigorous representations to the Government and a series of meetings had held in which the unions sought to persuade the Government to reverse its decisions. These discussions had been conducted in good faith by both sides. The Government, however, had concluded that the differences between the two sides were unbridgeable and could not lead to an outcome which would guarantee the uninterrupted and secure operation of GCHQ in the future. The unions had decided to pursue their argument by lodging a complaint with the Committee on Freedom of Association, which considered the case in May 1984 and again in February 1985. At its February meeting, that Committee had before it a second communication from the Government which was very substantial and included much new material on the interpretation of the relevant Conventions, and yet it had not addressed this new material in its report and had expressed the view that the communication contained no new factual information which would justify re-examination of the case. That Committee had accordingly decided that the attention of the Committee of Experts should be drawn to the communication which, for its part, it had addressed in its observation.

The Government representative noted that the TUC had alleged that the Government was in breach of Articles 2, 3, 4 and 5 of Convention No. 87 but that the Government was arguing that there was no violation of the principles of freedom of association because of the existence of Convention No. 151, adopted nearly 30 years after Conventions Nos. 87 and 98. He pointed out that Convention No. 151 was concerned with the practical application for the public service of the general principles laid down in Convention No. 87. Under Article 1(2) of Convention No. 151 the extent of the guarantees concerning the protection of the right to organise, which, the Convention provided, applied to certain high-level employees or to employees whose duties were of a highly confidential nature, was to be determined by national laws or regulations. It was accordingly clearly intended that the protections in Article 4 of the Convention against anti-union discrimination should be matters for governments to determine as regarded employees in highly confidential work. In the case of the United Kingdom the Government had exercised its right to make the national laws and regulations in respect of its employees at GCHQ. He recalled that the unions had contested the Government's action and that the highest British court, the House of Lords, had confirmed that the Government had acted in the interests of national security in this case and that its actions were lawful.

It was the practice of the ILO to ensure that Conventions it adopted did not conflict, and it was the Government's view that Convention No. 87 could not be examined in isolation from Conventions Nos. 98 and 151. It appeared from the records that there had been some dispute about the application of Convention No. 87 to the public service and that there was therefore a need for an instrument to deal specifically with this area. Convention No. 151 had consequently been adopted and overtook the generality of Convention No. 87 in this respect. It was clear from the Preamble to Convention No.151 that it had been adopted with the two earlier Conventions in mind.

He also recalled that the TUC had drawn attention to Article 1(1) of Convention No. 151, which provided that the Convention applied to all persons employed by the public authorities to the extent that more favourable provisions in other international labour Conventions are not applicable to them. The TUC contended that Convention No. 87 was clearer and more favourable than Convention No. 151. The Government, on the other hand, considered that this view made a nonsense of Convention No. 151 and, in particular, Article 1(2) thereof. It seemed indeed that Conventions Nos. 87 and 151 were interwoven and Article 1(2) must also have the effect of superseding, where appropriate, the corresponding provisions of Convention No. 87; Article 1(1) of Convention No.151 was in no way intended to detract from the provisions of Article 1(2) and there were no grounds for the TUC contention to that effect. Convention No. 151, and in particular Article 1(2) of that Convention, must mean what it stated, namely that it was for governments to determine, by national law and regulations, the extent to which the protections provided for in the Convention applied to workers, in this case engaged in highly confidential work. This was what his Government had done.

Point 6 in the observation of the Committee of Experts did not address these issues themselves, but noted that they involved difficulties in respect of which the International Court of Justice might more appropriately be requested to provide an opinion. The Government representative therefore thought it was clear that the Committee of Experts had recognised that the interpretation of the Conventions adopted earlier by the Committee on Freedom of Association was not the only sustainable one and was not necessarily definitive. If the experts had concluded that the conclusions of the Committee on Freedom of Association were definitive, they would have said so. The fact that the Committee of Experts discussed the possibility of referring the interpretation of the Conventions to the International Court of Justice showed that, in its view, the arguments advanced by his Government were serious and substantial and merited further detailed consideration before a definitive view could be reached.

The Government representative recalled that the Committee of Experts had endorsed the view of the Committee on Freedom of Association that if appropriate negotiations with the relevant organisations had taken place the Government's stated objective–of ensuring the uninterrupted and guaranteed and continuous operation of the work at GCHQ–could have been achieved in an atmosphere in which harmonious industrial relations could have been preserved and in which the compatibility of government measures with ratified international labour standards would not have been brought into question. The experts had also drawn attention to the limitations which might, in accordance with ILO principles, be placed on the right of public servants to organise and on the means of action available to public servants. While welcoming this very helpful and constructive suggestion from the Committee of Experts, he noted that one highly relevant point made by the ILO supervisory bodies in this connection was the possibility of "no strike agreements" which would make it unnecessary for governments to proceed with the suspension of the formal rights of freedom of association and collective bargaining. The circumstances, however, considered by the Committee of Experts in this connection in its 1983 General Survey, differed from the situation confronting the United Kingdom: first, they related to situations where the governments in question acknowledged that the rights conferred by ILO Conventions normally applied to the workers concerned; as had already been indicated, his Government did not take that view in respect of the staff at GCHQ under the relevant ILO Conventions. Secondly, the circumstances considered by the Committee of Experts did not relate to situations where considerations of national security–the security of the State itself–as opposed to public safety were concerned. This case was indeed a unique one, and his Government did not regard the precedents to which the Committee of Experts referred as offering a possible approach in this case. He stated that his Government had very seriously considered whether a solution to the GCHQ problem could be found through renewed negotiations with the unions concerned. It had concluded regretfully that further negotiations with the unions would not serve a useful purpose. It was, moreover, reinforced in its view by the fact that two of the main civil service unions concerned had formally rejected at their annual conferences last year any negotiations directed towards the possibility of concluding a "no strike agreement" at GCHQ. The unions, of course, could not change their positions on this point, but this possibility itself reinforced the Government's position because it considered it essential in the national interest to ensure the uninterrupted future operation of GCHQ and that situation could not be guaranteed if agreements entered into by the unions representing the workers concerned could be repudiated at any time in the future as a result of a change in position of the unions concerned.

The Worker member of the United Kingdom considered that the argument just presented by the Government representative was a legal evasion and an attempt to obscure the issue which he would clarify in reminding the Committee that the Government had offered the biggest bribe in the history of the trade union movement to the civil servants at GCHQ to give up their trade union rights. They had been offered £1,000 and there was, of course, another alternative if they did not take the bribe: they could be fired. He believed that it was a great credit to the ILO, its

standards and the beliefs of the working people of Great Britain that many employees had refused the bribe and he considered that the Government at the present moment was afraid to dismiss them. It was afraid to do this because it was worried about the ILO's opinion and because the British trade unions had indicated that if one person was dismissed there would be a general strike of all trade unions in Great Britain.

He recalled that the Committee on Freedom of Association had expressed the hope in its definitive conclusions that discussions would result in a resolution of the dispute and the restoration to these particular civil servants of the well-established right to join and belong to a trade union. At its second consideration of this case in February 1985, that Committee had reaffirmed its view despite the new facts which the Government alleged had been brought to light. He stressed that the Government was in total defiance of these conclusions and had tried to cause confusion by arguing that Convention No. 151 overrode Convention No. 87. That was not so, all the more so because if a situation was accepted where other Conventions overrode the fundamental Convention No. 87, then every State would be able to escape its obligations under it. The Government itself had consistently praised the Committee of Experts for its impartiality and had emphasised the importance of universality of standards; he therefore wondered whether the Government was now asking, or was on the verge of asking, that special standards should be set for it.

He hoped that this Conference Committee would reaffirm that there was only one standard which was applicable to all. The Committee of Experts had concluded that, as regarded the specific issue raised before the Committee on Freedom of Association and referred to by the TUC and having regard to Convention No. 87, the conclusions of the Committee on Freedom of Association were well founded. There could not be anything more positive than that.

Referring to the mention of the International Court of Justice, he challenged the Government, if it believed there was some doubt, to take the matter to that Court. As regarded the temporary victory won by the Government in the British courts, he considered that the problem was the definition of "national security". He offered one definition: national security was involved when the British Government said it was involved; that was really what the Government had argued in court. In political terms, however, it implied a measure of faith in the Government which the workers were not prepared to accept. Unions had existed in GCHQ since 1947 and the strike action referred to in 1981 was not a mere pay dispute, but a fundamental problem concerning the Government's unilateral abolition of a pay agreement that had existed for 25 years in the country. GCHQ had not been specifically involved, but it had joined in, on one or two occasions, in one-day or half-day strikes. He noted that it had been three years later when the Government had decided that national security was so important that the trade union should be banned in GCHQ. The Government had stated that the delay was due to the fact that it had never publicly admitted to the existence of GCHQ until 1983 when a spy had been caught there. Given the circumstances of the geographical setting of that huge establishment, he could not believe this. Lastly, he stressed that the trade unions, backed by the TUC, had indicated that they would be prepared to reach agreement with the Government on the question of no strike agreements in GCHQ subject to the same guarantees recommended by the Committee of Experts in the special circumstances where strikes were prohibited. The Government, however, was too stubborn to change its mind. He felt, nevertheless, that it really had to because that was what the Committee of Experts expected and he hoped that this Committee would confirm this. He asked the Government to agree here and now that there would be consultations with the trade union movement, led by the TUC, to reach a settlement; or, if legal doubts still existed, to take the matter to the International Court of Justice. He realised that the situation concerning GCHQ might not appear as pressing or serious as trade union problems facing workers in other countries, such as death, imprisonment, etc., and realised that a sense of perspective had to be kept in mind. It was, however, a shame that a country which had been the birthplace of trade unionism for many countries and a source of inspiration for the whole world had acted in this way. If a government could get away with this denial of human and trade union rights, dictators throughout the world would feel free to perpetrate even worse evils. The workers were entitled to express their serious concern at the Government's attitude and unless something more constructive could be done, perhaps a special paragraph might persuade the Government to change its present position.

The Employers' members noted that the case raised novel and complex legal issues on the relationship between Conventions Nos. 87 and 151. The fact that the arguments had gone beyond the specific matter of Convention No. 87 had led the Committee of Experts to suggest that the opinion of the International Court of Justice might more appropriately be sought. They would be interested to see what the outcome of any further consideration of this case might be.

The Workers' members considered that the matter was very clear and hoped that the wisdom shown in the Committee on Freedom of Association's conclusions, endorsed by the Committee of Experts, would be taken up, namely for all parties to sit down together to find a solution. This should also be this Committee's approach.

The Committee took note of the detailed explanations given by the Government member of the United Kingdom and the very full discussion that had taken place in the Committee. It hoped that the Government would be able to find appropriate solutions to the problems raised by the application of the Convention, taking into account the comments of the Committee of Experts.

The Chairman of the Committee, replying to the Workers' members and the Government member of Bulgaria, said that the reference to the comments of the Committee of Experts covered the reference made by that Committee in its comments on the conclusions and recommendations of the Committee on Freedom of Association.

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problems had arisen as a result of some disturbances in certain universities; the deaths of some students had occurred as a result of confrontations with the police. The persons had been arrested because of their participation in demonstrations in violation of existing law. It was not therefore a union problem, but rather one concerned with law and order and state security. He referred to the possibility in his country of having recourse to the courts and to the power of the Central Labour Organisation in Nigeria.

The Worker member of Nigeria stated that the people arrested had been accused of subversion and that all were trade unionists. In June, a demonstration had been organised by the Central Labour Organisation but, in the face of repressive force, it had been cancelled. Subsequently, trade unionists had been arrested and 14 of them were still in prison. Those others arrested who were not officials of the Nigeria Labour Congress, as referred to by the Government representative, were trade union members of the Academic Staff Union of Universities (ASUU) which was affiliated to the Central Trade Union.

The Workers' members stated that, contrary to what had been said by the Government's written submission, i.e. that the Government had "never clamped down on workers for going on strike", trade union leaders had been arrested for participating in trade union action, trade union leaders had been arrested for participating in trade union action. The Workers' members appealed to the Government to release the 14 trade unionists still in prison. They asked that the behaviour of the Government with regard to the arrest of the trade unionists, which constituted a violation of the Convention and the principles of the ILO, should be referred to in the conclusions.

The Government representative stated that it was a matter of two different questions; primarily there was a problem linked to the demonstration, which should not be linked to those problems concerning Convention No. 87. Solutions were already under way by peaceful means. He raised serious objections to the inclusion of this question in the conclusions of the Committee.

The Committee took note of the written and verbal replies which had been provided. The Committee noted that divergencies still existed between the national legislation and the provisions of the Convention. The Committee requested the Government to take the necessary steps to bring the national legislation into line with the provisions of the Convention.

Syrian Arab Republic (ratification: 1960). A Government representative emphasised the necessity of improving the methods of work of the Committee of Experts and, in particular, the necessity of taking into consideration the economic, social and political realities of the countries considered. It was impossible to supervise the application of Conventions without understanding the prevailing reality of the country in question. His Government attached great importance to ILO standards but it was not entirely satisfied with the conclusions which the Committee of Experts had arrived at in regard to the application of the Convention in his country. He recalled that, according to the ILO Constitution, the Committee of Experts only had a consultative role; their opinions were of a technical and legal nature which did not create any obligations. There was a contradiction between the comments of the Committee of Experts which stated that trade unions played an essential role, and its conclusions which cast doubt on the freedom which trade unions enjoyed. In his country, trade unions participated in the making of decisions in the economic and social domains. No impediment was imposed on their freedom. Trade unions were freely established and trade union leaders were freely elected. No one had the right to interfere in this procedure. After having noted the effect of ratification of international Conventions on national legislation, the speaker recalled that the provisions of the Convention were very flexible and that they therefore permitted a certain degree of interpretation.

He clearly described the provisions of Legislative Decree No. 84, In particular, sections 5 and 6, which provided that the establishment of unions and their affiliations in the districts was a matter within the competence of the workers alone and that nobody could interfere with their decisions. Pursuant to section 7 of the Legislative Decree, district trade unions and professional unions had the right to establish a general federation of workers' trade unions with its seat in Damascus. On this basis, the Committee of Experts stated that these provisions prohibited the establishment of any other trade union and imposed a single trade union system with one central organisation. In reality, the system was completely different: the trade unions were perfectly autonomous and the central affiliation system was aimed at protecting the interests of trade union members. If the manner in which trade union affiliation occurred in all the districts and sectors of the country were to be examined, it would be established that the workers voluntarily chose to join a central trade union. The central affiliation system enabled the workers to attain their objectives and their ambitions of having partner status in negotiations. While the law allowed trade unions to affiliate with a central body, which they had themselves decided to do, this did not mean that the law imposed the principle of trade union unity because the decision was made autonomously in various districts which had established various types of trade unions. As long as the structure of a country provided for the establishment of trade unions and for the affiliation of professional organisations, and as long as this affiliation was completely free and autonomous, it should be concluded that these numerous possibilities represented the essence of a trade union system and structure which was diverse and which was composed of various elements. Legislative Decree No. 84 had been added to by Legislative Decree No. 250 of 1969 concerning professional trade unions and by Act No. 21 of 1974 concerning peasants' co-operative associations. Furthermore, a teachers' union had been established pursuant to a Decree of 1982. In each district, various associations existed which were comprised of completely different types of trade unions and workers such as professional associations, employers' associations, teachers' associations, associations for the self-employed, and Chambers of Commerce, Industry and Agriculture. All of these associations were concerned with the well-being of their members. This demonstated the multiplicity of the trade union system. Each trade union had its own autonomy, full liberty and its own rules of procedure.

There were perhaps differences of interpretation with regard to the Convention. It was for this reason that the present Committee, in accordance with its terms of reference in the Conference, should examine in depth the cases which were submitted to it before adopting its position. This question was a matter pertaining to national sovereignty and of great international importance. The Committee of Experts had pointed out that section 25 of Legislative Decree No. 84 provided for different treatment for non-Arab foreign workers. Further, this provision established the right of foreigners to join trade unions with the reservation of reciprocity: the adoption of a clause of reciprocity was a right of state sovereignty. In practical terms, no workers had ever been refused the right to belong to a trade union or deprived of their rights as citizens.

The Committee of Experts had noted that section 32 of Legislative Decree No. 84 was not in conformity with the Convention because it did not allow associations to accept donations in money or in any other form without the approval of the General Federation and the Ministry. In this regard, legislation governing donations applied to all citizens, all organisations and all sectors. In this regard, a law existed which precisely detailed which donations could be accepted. It would not be logical to accept a donation from a person or organisation which did not support the national objectives and which would threaten the sovereignty of the country. It was the opinion of the Government representative that the Convention adopted the same interpretation on this point. This regulation therefore did not constitute an interference with the principle of freedom of association.

The provision of section 35 of Legislative Decree No. 84, which gave the Ministry the right to financial supervision of trade union funds, had been introduced to ensure that the accounts be properly kept. The way in which the funds were spent and the purposes for which they were used was a decision for the trade unions, and the Ministry had absolutely no say in these matters. Instructions issued by the Ministry in 1968 state that it was important to verify the books and financial statements and to give advice to all those responsible for maintaining the books to assist them in avoiding errors. This showed that the supervision exercised by the Ministry was in the nature of assistance and did not impinge upon the freedom of unions.

Section 36 of Legislative Decree No. 84, which provided for financial assistance to be given to trade unions, should not be considered any impediment to freedom of association because the union structures and affiliations were chosen by the organisations and they had a right to this financial asistance.

In regard to section 44 of Legislative Decree No. 84, a condition of having exercised an occupation for six months was required to be eligible for membership in a trade union. This provision had been adopted to ensure the competence and training of trade union leaders and thus did not pertain to freedom of association.

In regard to, inter alia, section 49(c) which authorised the dissolution of the executive body of a union in the case of serious misconduct, he noted that this provision could not be put into effect until an investigation into the nature of the misconduct engaged in by the body had taken place. According to the national legislation, the withdrawal of confidence from the members of the executive organ fell within the competence of the general leadership of the Federation, which only reflected the wishes of the trade union which had requested the dissolution of its executive body.

With respect to section 160 of the Agricultural Labour Code, which prohibits the right to strike in the agricultural sector, a draft law had been submitted by the Government to repeal this

provision. However, the legislative process takes time and this question was still before the competent authorities. The Government would undertake every effort to ensure that the abovementioned provision would be repealed.

In conclusion, the Government representative stated that it was not a question of the Government asking for assistance from the Office in order to find a solution to these matters; rather it was a problem of interpretation and not a problem of the implementation of the Convention.

The Workers' members stated that it was not necessary to reopen the discussion of the role of the Committee of Experts. The Committee of Experts was not the only body which discussed the application of Conventions; there was also the present Committee. It was false to claim that the Committee of Experts considered questions which were not within its sphere of competence because it received its terms of reference from the Governing Body. The Committee of Experts' evaluation of the application of Conventions was essential to the work of the present Committee.

In regard to this case in particular, certain remarks should be made. In the first place, since 1983 the present Committee had discussed more or less the same questions as were presented today. This meant that it was necessary to find the means to resolve the divergencies, or as the Government representative had said, the differences of interpretation, which should be eliminated. Secondly, it should be recalled that there were national legislative provisions which were not legally in conformity with the Convention. This included the single trade union system, the interference of public authorities in trade union administration, the supervision of their accounts and the problems in the agricultural sector. Certain positive aspects could be noted such as the adoption of Act No. 1 of 1985 which authorised public servants to form their own trade unions. Further, the Government had shown its willingness to review a certain number of problems. However, many other points of difficulty remained. It was regrettable that the Government representative had stated that his Government did not need the assistance of the Office, because there was every basis for believing that, without this assistance, the situation would not change. The problems between the Committee of Experts and the present Committee on the one hand and the Government on the other hand would remain, and there was the risk that the problems would become more acute. It was for this reason that the Workers' members insisted that the Government representative and his country envisage to accept a direct contacts mission wherein the situation could be clarified and the measures which should be taken could be examined.

The Employers' members expressed their appreciation to the Government representative for the very detailed information. In response to the objections raised by the Government representative in regard to the role of the Committee of Experts, it was recalled that the majority of members of the present Committee had subscribed to certain conclusions. First of all, the work of the Committee of Experts has a well-founded legal basis; secondly, the Committee of Experts had been doing excellent work for decades; and lastly, there was no other alternative to the supervisory system or, more particularly, to the Committee of Experts.

The report of the Committee of Experts had noted certain changes in the situation in the Syrian Arab Republic. In particular, public servants had the right to form their own trade union. Furthermore, last year the Government had announced that it was undertaking a serious study regarding the problems which had been raised in the present Committee. This study having been undertaken, and the present Committee having been informed of it, constituted a certain acceptance that measures still had to be taken. As the Committee of Experts had noted, certain problems continued to exist. The legislation contained provisions which provided for a single trade union structure; this system was contrary to the Convention. There also existed other restrictions on the freedom of association in regard to the trade union rights of non-Arab foreign workers, the administration of trade unions, the auditing of their finances, and so forth. It was not possible for the present Committee to engage in a discussion to examine the statement of the Government representative in great detail. However, the objective should always remain the same: to eliminate the discrepancies between the legislation and the practice on the one hand and the Convention on the other hand. The Government had rejected the idea of direct contacts because the problems which existed were not a matter of application but a question of interpretation of the Convention. In this regard, there would be no opposition to limiting direct contacts to one aspect of the problem and eliminating the other aspects. There was no reason why difficulties of interpretation could not be made the subject of this type of assistance. The borderline between problems of interpretation and problems of application was not always easy to distinguish. In this situation, the Employers' members believed that this type of assistance would be very useful and it would be worth while to see whether the discrepancies which existed could be overcome through this process. In any case, it would be a sign of goodwill and trust on the part of the Government. It was for this reason that they requested the Government representative to reconsider his position because there did not appear to be any other possibility of improving the situation after all these years of discussion.

The Worker member of the Byelorussian SSR noted that the statement made on behalf of the Workers' members did not completely reflect the prevailing opinions within this group. For his part, he fully accepted the information provided to the present Committee by the Government representative.

The Government member of Czechoslovakia noted that the problem of whether or not trade unions could be established within the framework of a single trade union system had been discussed on many occasions by this Committee in connection with a number of other countries. The position of the Committee of Experts was founded upon legal arguments; it made a distinction between trade union unity and trade union monopoly. There existed a variety of industrial relations systems as well as national economic and social conditions in which trade unions developed their activities. In this regard, it was interesting to note that the prevailing tendency in the ILO was to describe situations in developing countries as trade union monopolies and, as such, declare them to be incompatible with the Convention, whereas similar situations in the industrial market economy countries were always considered to be examples of trade union freedom and unity. This seemed to be an oversimplification and it did not provide a full picture of the situation. In considering the case of the Syrian Arab Republic, he noted that it was the workers themselves who decided freely what course of action to undertake. They certainly desired strong trade unions and they were aware that their interests could not be correctly defended in the absence of a solid union structure. In addition, trade unions in the Syrian Arab Republic were becoming aware of their responsibility for national economic and social development and new avenues were open to them to defend the occupational interests of their members, such as by participation in various decision-making bodies. In regard to the possibility of establishing trade union organisations outside the existing structure, the Government representative explained the situation in a very convincing manner. In addition, it should be remembered that there were situations in other countries, including the IMEC countries, where it was nearly impossible to establish a trade union organisation outside of the existing central organisation and, in such cases, no one ever doubted the conformity of the legislation and practice with the Convention. It was most important to ensure that workers had the right to form trade unions in all branches of the economy and regions of the country even if it was within the existing framework, and that workers had the right to freely elect their representatives. The Government had given its assurances in this direction; therefore, there was no reason for concern. Moreover, the Government representative stated that his Government was willing to continue the dialogue in order to clarify certain aspects of the problem, even if it did not want to have recourse to direct contacts.

The Government member of the German Democratic Republic stated that the information presented by the Government representative of the Syrian Arab Republic clearly showed the importance which it attached to trade union rights. The trade unions had a right, to a large extent, to co-determination and this placed them in a position to exert a considerable influence on their country. It was clear, in light of the statement of the Government representative, that the Committee of Experts had not fully understood the situation in this country. The Government did not need direct contacts to govern the question of industrial relations. To the contrary, what it needed was a certain amount of understanding of the reality of the prevailing situation in the country. The Syrian Arab Republic was one of those countries with a single trade union system. In this regard, its Government, like the others, would not be in agreement with the conclusions of the Committee of Experts, which described this situation as not being in conformity with the Convention. The free establishment of a single trade union allows workers in developing countries to be better represented by trade unions and to closely participate in the development of their country. In regard to the Committee of Experts' conclusion that the workers did not have the right to strike, it should be recalled that no mention was made of the right to strike in any of the provisions of the Convention. Further, the Committee of Experts had noted that the prohibition of strikes was not in conformity with Article 3 of the Convention. This conclusion was not based on the text of the Convention but rather should be considered as a personal interpretation of the Committee of Experts. Such a method of work should be rejected because it was in direct contradiction with the principle which required governments to report upon the instruments they had ratified. Any other conclusion would lead to uncertainty and legal insecurity which would dissuade new ratifications because States would be unable

to know in advance the interpretations which would be given to the Conventions. Further, such interpretations were made by bodies like the Committee of Experts, which had no competence in these matters. The case of the Syrian Arab Republic did not constitute the only case where the Committee of Experts had shown an intolerant attitude. This made it even more important for measures to be undertaken for the democratisation of the methods of work in regard to supervision. In conclusion, the speaker stated that the Committee of Experts should adopt a more realistic approach in the examination of this case and he welcomed other voices which he had heard to the same effect during the course of this discussion.

The Workers' members recalled the necessity of examining the case of the Syrian Arab Republic. They stated that Convention No. 87, ratified by this country, provided the same obligations for all countries. A single trade union system should not be imposed by the legislature or a political authority but should be left solely to the free will of the workers. In accordance with the Employers' members, they insisted that the Syrian Arab Republic accept appropriate assistance which would help overcome the problems of interpretation.

The Government member of the USSR emphasised the very detailed nature of the information provided by the Government representative of the Syrian Arab Republic in connection with the principal position of the Government on the trade union movement in his country and on the observations made by the Committee of Experts, as well as certain other questions. He took into account the remarks the Government representative had made in regard to the methods of work of the Committee of Experts. The reports of the Committee of Experts served as a basis for the discussion of the individual cases; therefore, it was not possible to avoid discussing its methods of work. This did not constitute reopening the general discussion, but it was necessary, when a Government representative had objections to the position taken by the Committee of Experts, that the representative be able to present his position. If his Government had objections concerning the report of the Committee of Experts, it was because the observations of the Committee of Experts were founded upon certain preconceived ideas. This particularly applied to Convention No. 87 on the basis of which the Experts tried to impose trade unions pluralism despite the numerous discussions which had taken place on this question in the present Committee. Finally, the speaker stated that it was for governments to decide themselves whether to accept direct contacts in their countries. Such a decision involved a matter of state sovereignty. The Committee, therefore, should not take a decision to impose on a government the obligation of inviting or accepting direct contacts.

The Worker member of the USSR considered that the Government representative of the Syrian Arab Republic had demonstrated in a convincing manner and on the basis of concrete facts that the Convention was fully applied in his country. The Committee of Experts was itself aware that there had been improvements in certain areas, particularly in regard to the right of public servants to form their own organisations. It was also noted in the statement of the Government that the workers in the agricultural sector had the right to participate in finding a solution to all their political, economic and other problems. In general, this was a question which depended upon the manner in which the Convention was interpreted. Two questions were put forward: the question of the control of trade union funds and the question of whether to have a single or pluralistic trade union system. In regard to the first question of the control of trade union funds, the social and economic conditions prevailing in the country must be taken into account. It was well known that, in various countries, certain forces were deployed to disrupt trade union organisations and that enormous amounts of money were used to corrupt trade union leaders towards a political end. It was therefore necessary to take measures to improve this situation, and this had to be taken into account. The second question, which had been discussed for a number of years, concerned the priorities which should be given in the implementation of Convention No. 87. Was it to establish the plurality of trade unions or to ensure the existence of a trade union movement? For many years, a number of arguments had been put forward which were not well founded. According to them, trade union unity was a good thing when it was implemented solely by the workers themselves, but if it were laid down by legislation it would not be appropriate. The imposition of plurality in trade unions as the only principle which was permitted to ensure the development of the trade union movement was erroneous and should be rejected. He welcomed the submission next year by the Committee of Experts of its proposals concerning its methods of work.

The Worker member of the German Democratic Republic, who also spoke on behalf of the Worker member of Czechoslovakia, stated that he fully supported the very convincing statement of the Government representative of the Syrian Arab Republic. He stressed that this case showed once again the one-sided interpretation of the Convention given by the Committee of Experts. In the country in question, the trade union structure was determined by the unions; they decided to establish a single trade union system in order to defend the interests of their members. The legislation reflected their decisions and therefore was not in violation of the provisions of the Convention.

The Government members of Bulgaria and of the Ukrainian SSR, and the Worker member of Bulgaria noted their full support for the statements make by the Government members of the German Democratic Republic, Czechoslovakia, the USSR, as well as of the Worker of member of the USSR.

The Government representative of the Syrian Arab Republic recalled that the Experts were able to be wrong sometimes because they are human. He emphasised the particularly flexible nature of the Convention which opened the door to a number of possible interpretations. It would be desirable for measures to be taken to determine criteria for interpretation in order to avoid situations such as this one coming before the Committee year after year. The fact that the Government did not want either technical assistance or direct contacts did not mean that it refused them. The Committee of Experts should define and clarify its interpretation of the Convention.

The Committee noted the detailed information supplied by the Government representative and the discussion that had taken place in the Committee. It noted that a number of differences of opinion existed with regard to the implementation of the Convention. The Committee expressed the hope that appropriate steps would be taken, preferably in co-operation with the International Labour Office, to resolve these interpretation difficulties.

The spokesman of the Workers' group stated that he understood the reference to the co-operation with the ILO to mean appropriate assistance designed to put an end to the differing interpretations of the Convention.

Convention No. 95: Protection of Wages, 1949

Dominican Republic (ratification: 1973). The Government has communicated the following information:

1. *Legislative measures*

(a) *Article 2 of the Convention.* The Government of the Dominican Republic reiterates that the economic, political and social conditions of the country have not permitted the approval of a provision which could extend the provisions of the Labour Code relative to the protection of wages to agricultural undertakings which employ ten or fewer workers.

(b) *Article 3.* The Government repeats what it indicated earlier, that these practices have been abandoned. It is hoped to expressly repeal this provision during the revision of the labour legislation.

(c) The Government reaffirms what it stated at the 71st Session of the International Labour Conference, that internal legislative difficulties have prevented the submission of concrete drafts relative to these recommendations to give effect to the requirements of Articles 5, 6, 8, 10, 13, 14 and 15 of the Convention. Nonetheless, these provisions are given effect in practice.

2. *Measures to guarantee the payment of the legal minimum wage in agriculture*

The legal minimum wage in agriculture is paid on a regular basis. The majority of the workers in the countryside prefers the system of payment on the basis of output and bonuses, since this is more beneficial to them. In the sugar industry the system of payment is on the basis of the amount of the worker's output, which exceeds the minimum wage established when based upon an eight-hour day's work. In relation to the distribution of cane cutters' working hours, the Government refers to its previous comments, in which is explained that it has not been possible to establish a precise number of working hours for cane cutters since they are paid on the basis of the amount of cane cut, since the worker chooses the most convenient hours in terms of temperature, etc., in which to perform his or her work. The authorities supervise the accuracy of the weighing of the sugar cane, with the representatives of the workers supervising in order to check the exact weight of the cane cut.

3. *Payment of wages in negotiable wage vouchers*

The Government repeats what it stated in its report regarding this Convention, that the practice of paying wages in negotiable wage vouchers has been abolished, and that the provision in the Labour Code will be repealed as soon as it is revised.

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Colombia (ratification: 1976). A Government representative of Colombia, Minister of Labour and Social Security, stressed the improvements with regard to Convention No. 87 brought about by Act No. 50 as a result of which steps had been able to be taken to improve the situation regarding the legal personality of trade unions. It was now a matter for the labour courts to resolve any disputes or cases in this connection. The constituent Assembly had approved the registration of a number of unions. They now had the right to engage in collective bargaining and conclude col-lective agreements; these unions represented about a third of the workers. It was also possible to form mixed trade unions.

He raised certain expressions which were not exactly taken up in the Act, due to the short time that had been available to examine in depth the Committee of Experts' comments. The Experts stated that the election of trade union officers had to be submitted

for approval by the administrative authorities and it deemed this to be a breach of Article 3 of the Convention using references to Resolutions dating from 1952, 1972 and 1979. He had the text of the 1958 Resolution with him and pointed out that it did not make any reference at all to the approval of the election of trade union officers. There was a reference to giving information about elected officials, but there was no wording as stated in the report of the Committee of Experts. Likewise, according to the Experts, new section 380(3) of the Labour Code provided for suspension for up to three years, with loss of trade union rights, of trade union officers who were responsible for the dissolution of their unions. However, he pointed out that this was not administrative suspension, but a faculty available to the Government when standards were violated. It was then possible to have recourse to the labour courts which would decide the question. He stated that the provision cited by the Experts as prohibiting trade unions from taking part in political matters had been repealed in 1990. He stressed that Colombia respected freedom of association and trade union officials had always been free to engage in politics; many were in fact members of Congress. As for the Experts' mention of new section 450 of the Labour Code, as amended in 1990, he noted that before suspension or dissolution of the legal personality of a trade union following a strike or unlawful work stoppage could take place, the matter required a decision by the labour courts. Thus new section 450(3) of the Code provides for the withdrawal or suspension of legal personality, but not by the administrative authority.

Referring to the right to strike, he was of the opinion that the constitutional procedures and the terms of the Standing Orders of the Conference permitted discussion of this question in some appropriate way within the ILO. The Committee of Experts stated that, in Colombia, strikes were prohibited not only in essential services in the strict sense of the term, but also in a wide range of public services which were not necessarily essential. It was true thet the Constitution prohibited strikes in public services, but this was because his Government believed that all public services were essential. His Government had proposed legislation in the Constituent Assembly which it considered to be in conformity with Convention No. 87. This was provided for in the national Constitution because when the authorities had to take action within their competence, they bore in mind the fact that strikes had to be related to economic matters of direct concern to workers. Mention had been made of the power vested in the Minister of Labour to permit the dismissal of all the workers in an undertaking in certain circumstances, one of which was if the strike had not been resolved by arbitration. He stated that the law of the majority should prevail in the case of a trade union. His Government also considered it important to maintain the 1968 legislation providing that there could be restrictions on a strike which affected the interests of the national economy; but even here the agreement of the Labour Chamber of the Supreme Court had to be obtained.

Referring to the Committee of Experts' comment on the prohibition of strikes, subject to administrative penalties, when a state of emergency had been declared, he stressed that it was only in such cases that such sanctions could be imposed; that is, in very special circumstances. In Colombia, there had been very serious difficulties and work stoppages – not actual strikes – which had restricted the right to work of those who did not want to take part in the stoppages designed, for example, to paralyse transport or interrupt communications. In these special cases the Government had taken action, as it was permitted under the Constitution, and the situation in Colombia necessitating such action was well known.

As regards action against trade union officers who had intervened or participated in an illegal strike, and the prohibition of work stoppages which can have subversive ends, the speaker pointed out that Article 8 of the Convention provided that in exercising the rights under the Convention, workers and employers and their respective organisations, like other persons or collectivities, had to respect the law of the land. For these reasons, and again repeating that there were imprecisions in the Experts' report, the Government representative expressed his concern about the need for a clearer definition of the right to strike and all its implications.

Referring to Convention No. 98, he stated that the Act No. 50 permitted the formation of mixed trade unions in which public service employees and private employees could both be members. There had been a great deal of legislative reform in connection with the Labour Code which had been in force for over 40 years and his Government was pressing on with reforms in order to bring the legislation into line with the Conventions in question. The Constituent Assembly, was currently meeting with a view to ensuring that new powers were vested in Congress in this connection; and new legislation was being drafted with a view to accomplishing all these reforms.

The Workers' members of the United Kingdom, while thanking the Government representative for his very detailed report, believed that he Workers, disagreed with much of what he had said. The Committee of Experts had quite rightly set out the legal formulations necessary to bring the Colombian legislation into conformity with Conventions Nos. 87 and 98. While they had to record some progress at the legislative level as a result of the adoption of Act No. 50, the present Committee and the Committee of Experts were also concerned with practice. As was noted last year, behind this case were possibly the most horrifying facts that would emerge in discussions in the present Committee: they could read out a list of prominent trade union leaders who had been killed, tortured, raped or who had disappeared, and since last year the situation had worsened. To read out the names provided by the International Confederation of Free Trade Unions and Amnesty International as well as other human rights groups, would do disservice to the many hundreds of victims whose names were unknown. The Government would say, as it did last year, that this violence against trade unionists was the work of drug dealers and criminals. This was, to some extent, true. But considerable evidence existed showing that members of the security forces had acquiesced, and had even been directly involved in some of these criminal acts. The attitude of the Government towards trade unions, with its restriction of trade union rights and detention without trial for long periods, created an atmosphere in which criminals and drug dealers had to feel that they were almost acting as government agents. Trade unionists themselves, in trying to establish recognition of basic trade union rights, were being treated as criminals in Colombia. Unionists throughout the world tried desperately to promote their causes peacefully: if the Government of Colombia was to harness the peaceful cooperation of unions, instead of repressing them, it might have better success in dealing with the criminal elements which pervaded the whole of Colombian society. Trade unionists discovered that, although massive military forces were available to break up local strikes, the same forces were mysteriously absent when union headquarters were being attacked and unionists being killed.

The Employers' members recalled that the Committee of Experts was of the view that the new legislation had led to some progress for both Conventions Nos. 87 and 98. Since the various points had been raised and discussed for a number of years, any change in a positive direction was to be welcomed. But there was still a lengthy list of continuing deficiencies which required discussion. Of the four points raised under Convention No. 87, the first two concerned the setting up and internal functioning of the trade unions. The provisions mentioned were quite clearly contrary to the Convention and were quite unnecessary and should be changed. The Government representative, referring to a large number of points, had repeatedly stated that the situation had changed, but the Employers were not clear whether all the points criticised by the Experts had been rectified. Considerable clarification was required here and they requested an exact report on where changes had taken place and what further changes were envisaged. They considered that points 3 and 4 raised under Convention No. 87 were less clear. It was a question of the often difficult distinction between trade unions and political organisations. There was no doubt that there could be no ban on political activity or political meetings, but one could distinguish between political and other organisations and it was also clear that truly political bodies were not covered by the Convention. As regarded the possibility of restricting strikes, the Employers indicated as they had in 1989 that they did not share the view of the Committee of Experts, namely that strikes could be restricted or prohibited only in public services in the strict sense of the term. Nevertheless they stated that there had to be a limit set as regarded the prohibition of strikes, which should not be too restrictive, and the situation in Colombia had to be changed on this point as well.

As for Convention No. 98, the Committee of Experts is satisfied because fines had been further increased. However, the Employers repeated that it was not necessary to specify amounts because Article 1 and 2 of the Convention referred to "adequate" protection and Article 4 recognised that measures had to be appropriate to national conditions. One further point remained outstanding, that of civil servants not being able to bargain collectively. This restriction was so extensive that it also applied to workers in commercial and industrial enterprises just because they were State-owned. The Employers believed that such workers should not be deprived of the right to bargain collectively. Since it appeared that the Government representative had stated that certain restrictions no longer existed, the Employers' members felt that his statement should be included in a detailed report so that the facts could be verified.

As there were still considerable differences, particularly concerning Convention No. 87, there was a need for rapid change and they considered that the present Committee should insist on a change in the near future in both the legislation and practice.

A Workers' member of Colombia thanked the ILO and all those who had expressed their concern and distress at the terrible situation faced by workers in Colombia. Referring to the statement made by the Government representative, he maintained that there was improper interference by the State in every aspect of the functioning of trade unions and not only in the Confederation to which he belonged. A virtual war was being waged against the trade union movement in Colombia and this arose in connection with the most recent legislation mentioned by the Committee of Experts in its report. He stated that the trade union movement had, for a long time, been making requests and calling for democratic reform of the labour legislation, but had constantly met resistance from the Government and employers. With reference to the Government representative's statement that reforms were being carried out in collaboration with the workers and employers, he observed that although the workers had hoped for proper proposals, the Government had produced reactionary provisions that were now embodied in Act No. 50 of 1990. In his opinion, the Government was trying to convince world public opinion that the amendments favoured workers whereas the legislation had really been brought into line with the requirements of the World Bank and International Monetary Fund. There had been some progress compared to 1989 and 1990 but he noted that Conventions Nos. 87 and 98 had been law in Colombia since 1976 and, despite all the legislation passed over the last fifteen years, they were still not properly applied. The Government representative had stated that strikes were not prohibited, but rather work stoppages. However, the four trade union confederations had organised a strike on 14 November 1990 aimed exclusively at defending workers' interests and this peaceful action had resulted in government measures including imprisonment for three years of those who called the strike, confiscation of trade union funds and the censorship of union radio and television. The military forces had been deployed as an intimidation measure and the Government had orchestrated a disinformation campaign alleging that the stoppage had been a failure. In concluding, he considered that the work of the Committee of Experts in this case had to be continued and suggested that a direct contacts mission be sent once again to the country with a view to establishing clearly how Act no. 50 of 1990 was going to be applied in practice.

Another Workers' member of Colombia, having listened to the Government representative's statement, informed the Committee that the situation of Colombian workers could not be worse. The new labour legislation not only breached the fundamental principles of the ILO, but was aimed at destroying the Colombian trade union movement. He based this remark on the following: rather than providing for the "elimination" of obstacles to the formation of unions, the Act allowed precarious employment contracts so that it was impossible for workers to join a union because of their temporary employment situation. Workers knew that if they joined a union, they ran the risk that their contracts would not be renewed. With this institutionalisation of temporary employment (the law had previously prohibited contracts of less than one year) it was impossible in practice for workers to belong to unions and to conclude collective agreements. The new Act also introduced changes concerning strike formalities and he pointed out that it was now very difficult for workers to vote in favour of a strike because the decision had to be taken at an enterprise-level meeting which could be attended by workers who were not members of the union. He added that the Government was propagating the fallacious idea that it did not prohibit strikes, only stoppages, but the stoppage of 14 November 1990, already referred, to was precisely a strike to protest against the introduction of this new Act on which the workers had not at all been consulted. They had been allowed to attend meetings of the committees discussing the draft provisions but had not been able to express their views, even though other parties had been heard. The stoppage itself had not been subversive and the confederations involved had publicly appealed to guerilla groups not to intervene in any way; nevertheless, it was declared illegal before it started and disciplinary action was taken throughout Colombia. Another deterioration introduced by the new Act was the lowering of the minimum age for admission to employment from 14 to 12 years, which could not be called progress. He called for an ILO mission to visit Colombia to assess the real situation. Lastly, he referred to a report of the Committee on Freedom of Association which called on the authorities to take steps to ensure the reinstatement of a group of workers who had been unjustifiably dismissed in the textiles sector. To date there had been no information from the Government about any reinstatements and this showed that, while the Government said one thing in order to impress public opinion, what was actually occurring in the country was quite different.

Another Workers' member of Colombia pointed out that this decade had been one of the most difficult in the history of Colombian workers. The Government representative had not referred correctly to the facts or to the policies of structural adjustment which were, in reality, not decided in Colombia, but by the World Bank and the International Monetary Fund in Washington. He believed that this neo-liberalism imposed by a cruel developmental policy would not hesitate in destroying the democratic basis of the union movement in the interests of implementing a new economic order in Latin America. It was no accident that today's leaders in Latin America had received instructions on this new economic order which was detrimental to social justice. In Colombia, these structural and economic policies were affecting the poorest and most marginalised sectors of the population. The new Act merely complied with these measures; the future was therefore bleak. He stressed that efforts had to be continued to combat the repression of the interests of Colombian workers, which were the interests of Latin American, Third World and all workers in general.

The Government representative of Colombia, referring to the statements made by members of the Colombian trade union confederations, supported their proposal that an ILO mission go to Colombia very shortly to study on the spot the various issues raised here. In that way his Government could help the ILO learn more about the situation in the country. Referring to the Workers' members statement, he firstly rejected most strongly the remark that the agents of terrorism and drug traffickers were acting virtually as government agents. Their acts had to be condemned, and none of them were in any way attributable to or associated with the Government. In carrying out its mandate as elected representatives of the people, his Government had done everything possible to combat these subversive acts. Secondly, he rejected the insinuation that a foreign power should interfere in the internal affairs of a country. There had been interventions which were already forgotten in Latin America. Relations with the United States were excellent. He added that he had not broached the problem of the long list of trade unionists who had been subject to attack in the country because that was not covered by the report of the Committee of Experts. He acknowledged, to his distress, that it was not only trade unionists who were the victims but also presidential candidates, judges, magistrates, police officers, soldiers, entrepreneurs and innocent citizens. All Colombians were concerned over the painful situation in the country and unionists knew, better than anyone else, that it was necessary to put a stop to these subversive attacks. Referring to the comments of the Employers' members, the Government representative stated that he had taken careful note and that the Government would be taking the necessary steps to remedy the situation. He repeated for clarity that the new Act had abolished suspension by administrative authority of the legal personality of trade unions; everything connected with withdrawal or suspension of legal personality was now a matter for the courts. In addition, he repeated that section 450 of the new Act had been misquoted. Lastly, he recalled his wish that the ILO carefully study all aspects of the right to strike and he repeated that a mission should visit the country to note the progress achieved, progress which had been recognised to some extent by the trade union leaders who had spoken earlier.

The Workers' members stated that to arrive at a better situation, two factors were needed: firstly legislation in full conformity with the principles and obligations of the Conventions, and secondly the practical application of their principles and obligations. On the first point the report of the Committee of Experts was clear. Although it noted certain progress with satisfaction, it recalled a series of major questions which had not been resolved. As for the practical application the Committee had heard the interventions of the Workers' members. It was also known that the Committee on Freedom of Association was seized of several complaints and had called on the Government to take measures to end the violence affecting a great number of trade unionists and to strengthen the protection of workers and trade union leaders against acts of anti-union discrimination. On all these points, the statement of the Government representative was regrettable and worrying. Regrettable in form, because although there had been special paragraphs on this case for two consecutive years, there was no written reply to the comments made and only an oral statement which could not be examined in depth. Worrying in content, because the Government was well aware of the views of the Committee of Experts and the present Committee, but only gave assurances of one day arriving at a better situation. They believed that the present Committee should insist on the Government taking measures not only to reply to the questions raised, but to change the legislation to bring it into full conformity with the Conventions. The Workers' members wanted to continue dialogue but the maximum pressure had to be brought to bear for this. They had initially considered proposing that this case be mentioned in the present Committee's report as one of continued failure to implement, but the Experts had noted some progress. They stressed that they would have proposed for the third time a special paragraph for Colombia, but in view of the fact that the Government had asked for a direct contacts mission and in the

hope that this mission would take place shortly they would not do so.

The Employers' members noted from the discussion that the situation in Colombia was worrying and had gone beyond the scope of the Conventions. Nevertheless, as concerned the questions to be dealt with here, some things were very clear and had to be changed. They repeated that every necessary step should be taken towards this. As for the suggestion of a direct contacts mission, they recalled that such a mission had taken place in 1988. This was not always the way to settle everything, but they assumed that goodwill was present. Last year, the present Committee's conclusions reflected the Government's request for technical assistance from the ILO. This could be done once again, but they expressed the wish that the mission take place as soon as possible and that corresponding results be achieved.

The Employers' member of Algeria added his deep concern over the situation which was seriously deteriorating in Colombia as regarded respect for the most fundamental standards of the ILO, namely Conventions Nos. 87, 98 and those linked to non-discrimination. The case being discussed here was not new to the present Committee's members and he wished to stress that both workers' and employers' organisations would be able to enjoy the democratic rights flowing from Conventions Nos. 87 and 98. He had seen in his own country the ease with which the struggle for democratic rights could be transformed by the powers that be into a "pseudo-subversive" struggle. He agreed with the Workers' members that, morally, the Committee had to maintain maximum pressure despite the progress noted in Colombia. The direct contacts mission should take place, but he did not wish to see the case being discussed over the years to come. The situation was serious and there had to be respect for the responsibilities and principles accepted by virtue of the Constitution of the ILO.

The Committee noted the information supplied by the Government as well as the discussion that had taken place and submitted them to the Committee of Experts. It took note of the request addressed to the ILO regarding the sending of a direct contacts mission and hoped that it would take place very shortly. The Committee noted with interest certain legislative improvements which had taken place in the application of Conventions Nos. 87 and 98 since last year. However, in view of the deep concern which it had expressed for a number of years in connection with the numerous and serious deficiencies that continued to exist in the law and in practice as regarded the application of the Conventions, the Committee expressed the firm hope that the Government would be in a position to communicate to the supervisory bodies of the ILO as rapidly as possible specific information on the measures taken or envisaged so as to bring the legislation and practice into full conformity with the requirements of these Conventions. In view of the seriousness of the trade union situation which was confirmed by the Committee on Freedom of Association when it examined pending cases, the Committee insisted that the Government indicate that real and substantial progress had been made in its next report.

Document No. 248

ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/42-24/44 (Dominican Republic)

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Dominican Republic (ratification: 1956). The Government communicated the following information:

1. *Trade union rights in free trade zones*

As concerns the trade union rights of workers in free trade zones, the Government has provided a response, dated 19 March 1991, to the direct request of the Committee of Experts. Twenty enterprise-level unions in free trade zones are currently registered by the Trade Union Registration Section of the Secretary of State for Labour. All requests for information concerning free trade zones' trade unions' conformity with the law will, without delay, be complied with.

With regard to the low rate of unionisation of workers employed in free trade zones, this is due, fundamentally, to the fact that more than 90 per cent of the personnel of enterprises situated in these zones are women from rural areas working for the first time.

Moreover, the draft Labour Code (which is currently being discussed by employers and workers before being submitted to the National Congress in conformity with the provisions of Decree No. 404/90) contains provisions aimed at overcoming all hesitation by administrative labour authorities to register these unions. In this sense, article 380 of the draft provides that "if within 60 days, the Secretary of State for Labour does not proceed to registration, the workers may give notice that such a decision shall be made and if it is not taken within 30 days, the union will be deemed to be registered with full legal effect attached with such registration".

2. *Workers in agricultural enterprises employing no more than ten workers*

Section 265 of the current Labour Code will be repealed when the draft of amendments to the Labour Code is adopted. The draft provides that the Code will no longer exclude agricultural enterprises which do not employ more than ten workers on a continuous and permanent basis. Henceforth, agricultural enterprises, agro-industries, farming and forestry which employ, in a continuous and permanent manner, ten or more workers, will be regulated by their provisions of the new Code (section 285 of the draft Labour Code).

3. *Public officials and other workers and technicians in the public sector*

Section 13 of Law No. 520 of 1920 was repealed by the Constitution of the Republic which recognised freedom of association and established that international conventions ratified by the Dominican Republic would be internally binding standards. These provisions are recent, superseding earlier law. According to article 46 of the Constitution of 1966: "all laws, decrees, decisions, regulations and acts contrary to the present Constitution are null and void".

In addition the Law on Public Function and Administrative Career, approved by the Chamber of Deputies on 22 January 1991 and by the Senate of the Republic on 8 May 1991, provides for the right of organisaton of agents of the public service (section 30 of the Law).

Law No. 56 of 24 November 1965, and Law No. 5915 of 1962, will be repealed with the approval of the draft of amendments of the Labour Code which, as has already been indicated, is currently the subject of discussions between employers and workers, before its submission to the National Congress (section 736 of the draft Labour Code).

Law No. 2059 of 22 July 1949 neither refers to freedom of association nor restricts it. Moreover, in the draft of amendments to the Labour Code, it is proposed to partially amend the law to the extent that employees of autonomous institution of State of a commercial or industrial character or in the transport sector will be regulated by the labour law, including provisions concerning the right to organise, to bargain collectively and to strike (sections 2 and 737 of the draft Labour Code).

In conclusion, in this area, the Law on Public Function and Administrative career, which came into effect with approval of the national Congress, confirms the right of trade union organisation of agents of the public function and repeals all related provisions in Law No. 2059 of 22 July 1949.

4. *Restrictions on the right to strike*

The draft of the new Labour Code takes into account the recommendations of the Committee of Experts: section 371 of the Labour Code is modified and section 408 of the draft excludes from the definition of "permanent public services" transport, the retailing of foodstuffs in markets, sanitary services and the sale of transport fuel. This exclusion means that strikes and work stoppages in these services will be authorised when the new Code is approved.

Similarly, section 373 of the current Code (which refers to sympathy and political strikes) will be suppressed by section 410 of the draft. Law No. 5915 of 1962 which forbids solidarity strikes will be expressly repealed by section 736 of the draft of the new Labour Code.

Regarding the vote required by section 374 of the current Labour Code to declare a strike, section 411 of the draft of amendments to the Labour Code reduces to 51 per cent the majority needed to call a strike.

In the draft of amendments to the Labour Code, it is anticipated that the arbitration procedure will be deemed activated from the date of notification of the judicial decision issued upon resumption of work, this resumption shall take place within the five days which follow the date of the above-mentioned judicial decision (sections 414 and 688 of the new Labour Code).

As concerns the conclusion of the Committee on Freedom of Association, in Case No. 1549, it should be noted that in cases of strikes touching upon public services, the workers currently have the right to resort to the National Wages Committee if the subject is within the competence of this Committee (section 370 of the Labour Code); that arbitration is regulated by section 636 and following of the current Labour Code. In consequence, the current Code includes a scheme which places in impartial hands, the regulation conflict involving economic and social order.

In addition, a Government representative, the Secretary of State for Labour, referred to the question of trade union rights of workers in free trade zones and Convention No. 87. As was pointed out in his Government's written communication, 20 enterprise-level unions were currently registered for such zones and the low rate of unionism could be due to the fact that most workers in these zones were peasant women from rural areas working for the first time. From October 1990 to May 1991, all unions requesting registration had it granted within the ten days allotted under the current Labour Code. The largest number of free trade zone unions was in the Province of San Pedro di Marcores, which had a long tradition of unionism. He repeated that the draft Labour Code contained provisions aimed at overcoming any reluctance by the administrative labour authorities to register unions in these zones. On the question of the right to organise of workers in agricultural enterprises employing no more than ten workers and public officials and other workers in the public sector, he reiterated that the new draft Labour Code would no longer exclude agricultural enterprises from its scope and that the new Act on the Public Service and Administrative Careers (promulgated on 28 May 1991) provided for the right to organise of public servants. On this latter point, with the approval of the draft amendments to the Labour Code, currently being discussed, Act No. 56 of 1965 and Act No. 5915 of 1962 would be repealed; he stated that Act No. 2059 of 1949 referred neither to freedom of association nor restricted it. In any case, the draft amendments to the Labour Code proposed partially to amend that Act so that the Labour Code would apply to the employees involved. Regarding restrictions on the right to strike he again referred to his Government's written communication, stressing that the new Labour Code took into account the recommendations of the Committee of Experts so as to exclude from the definition of "permanent public services" transport, the retailing of foodstuffs in markets, health services and the sale of transport fuel. Likewise, the new Labour Code would expressly repeal the current bans on sympathy, political and solidarity strikes. The new draft would reduce to 51 per cent, the majority vote needed for the calling of a strike. The new Code provided that arbitration did apply from the notification of the resumption of work which was to take place within five days after that notice had been issued. He repeated that the current Labour Code provided a formula for placing the settlement of economic and social disputes in impartial hands as arbitration required: one arbiter was designated by the workers, one by the employers and a third was appointed jointly by the parties.

Referring to Articles 1 and 2 of Convention No. 98 on the need to strengthen measures protecting workers against anti-union discrimination and acts of interference, the Government representative repeated the written information communited by his Government and set out in document D.4 stressing that the national Constitution expressly protected freedom of association by stating that "trade union organisation is free". In addition, the current Labour Code contained a number of provisions protecting trade union autonomy against interference by both employers and the public authorities. The new draft Labour Code would reinforce trade union rights by introducing trade union immunity to protect those forming a union, as well as union leaders; in the case of a dismissal, the employer would have to obtain the prior approval of the Labour Tribunal which would also have to examine whether there was a serious reason for such a dismissal or whether it was a reprisal based on the trade union activities of the official. The draft Labour Code would also substantially increase penalties for infringements of the Code. He explained that the question of dismissal of union leaders in free trade zones raised by the Independent Workers' Confederation before the Committee of Experts and the Committee on Freedom of Association had been taken by the unions concerned to the courts. In any case the draft Labour Code Would give absolute protection against dismissal on account of trade union activities in free trade zones. Lastly, the Government representative referred to his comments under Convention No. 87 concerning the exclusion of workers in agricultural enterprises employing not more than ten persons from the scope of the Labour Code.

The Workers' members noted the Government's written communication and the comments made by the Secretary of State for Labour describing a change in the situation concerning trade union rights in free trade zones. However, this information still had to be examined by the Committee of Experts. For the other points, the key element was the new draft Labour Code which, according to the Government, would take account of the comments made by the Experts. For Convention No. 87, these comments concerned limitations on trade union rights in agricultural enterprises employing no more than ten workers, major restrictions on the right to organise of public servants and on the right to strike in essential services. For Convention No. 98, the outstanding comments concerned protection against acts of anti-union discrimination. One could talk of promised progress which had not yet taken place. The Workers' members believed that the conclusions should stress more precisely that the new legislation genuinely should respect all the obligations flowing from these two Conventions, as well as the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1549 concerning strikes in essential services. All the information should be sent, including the text of the new legislation once adopted. In that way the Committee of Experts and the present Committee would be in a position to re-examine the situation next year.

The Employers' members, referring to Convention No. 87, pointed out that there were four different problems: firstly, on the question of whether freedom of association was being unreasonably restricted in free trade zones; the Committee of Experts felt that there were violations at least as far as small trade union organisations were concerned. The Government representative stated that unionisation might depend on the fact that the workers were mainly women from rural areas, but there were also other reasons for such a situation arising. According to the Government, the new Labour Code's provisions concerning registration of trade unions would considerably change and improve the situation, providing either for automatic recognition or the refusal to allow the registration of a union with the reasons being given. Secondly, a similar situation existed regarding freedom of association in the agricultural sector where, once against, the new Labour Code was supposed to bring about considerable change by abolishing the current restrictions. Thirdly, the same would happen to restrictions which have existed up to now regarding the trade union rights of public servants. They believed that these three problem areas would therefore be removed. Fourthly, as regarded restrictions on the right to strike, the Experts had given their classic definition of the right to strike, that is, that restrictions on the right to strike could be allowed in essential services in the strict sense of the term as understood by the Committee of Experts. The Employers' members did not necessarily think that this was the case as contemplated by the Convention, but this question did not need to be considered in greater depth here because the Government had stated that the legal situation was going to be changed. Of course, if the Government followed the wishes expressed by the Committee of Experts, no one would criticise it; but they were of the view that essential services in the strict sense of the term could not be defined as only concerning risks of life and limb or the provision of water and electricity. Other things could be covered by essential services as the Employers had already recalled in earlier discussions. For example, the Experts did not believe that education was an essential service which the Employers found difficult to understand given its fundamental significance. There was also the definition given in Article 31 of the Vienna Convention on the Law of Treaties. Since the Government had declared that it was going to change the situation, the Employers' members would not criticise it for following the Experts' recommendations.

As for Convention No. 98, the Employers' members noted the Government reply that it wanted to, and was going to, amend its legislation in order to bring it into line with this Convention. Thus a long discussion on this question was not necessary. Nevertheless, they noted that the Convention talked of "adequate" protection and implementation "in accordance with national law", and that specific concrete measures were not specified. There were many ways of applying this Convention and it was quite correct to refer to the ILO Constitution under which States Members undertook to apply all the Conventions they ratified and to adopt the necessary measures for their implementation. A member State had a certain room to manoeuvre in this respect and the supervisory bodies could determine the validity of the measures chosen. Since the Government had announced basic legislative reforms along the lines wished by the Committee of Experts, they did not wish to go further into this question; but they hoped that the conclusions would take their view into account.

The Government member of Germany agreed in principle with the proposals made by the Workers' members but wondered whether, firstly, specific progress had indeed been achieved in free trade zones and in working conditions there. Secondly, he wondered whether a reference in the present Committee's conclusions to the need to implement the recommendations of the Committee on Freedom of Association would be outside this Committee's mandate. As far as this particular case was concerned, he did not have any reservations really, although he pointed out that the fact that his Government was prepared to follow the Committee of Experts should not be interpreted as meaning that all governments who, at the present Committee, reached a consensus supporting the conclusions based their interpretation on the Committee of Experts.

The Government member of Argentina made the point that essential services were those which could, because of their duration, affect the life, personal safety and health of the population. No one in particular was identified, but rather the concept; to try to include education or any other service therein was not the job of the present Committee. The Committee had to adhere to the clear concept as defined by the ILO.

The Workers' member of the Dominican Republic pointed out with respect to free trade zones that these areas had grown tremendously in his country: there were now three industrial parks having more than 350 enterprises employing 120,000 workers. This was undoubtedly a means of minimising unemployment which stood at around 30 per cent in the Dominican Republic. But the working conditions in some enterprises in these zones were totally inhuman where the treatment was like that meted out in jails. The Dominican Republic Trade Union Confederation (CNTD), and other organisations, had been involved in a fierce struggle to organise as many workers as possible and to negotiate collective bargaining agreements for better working conditions. To date their efforts had not been successful. Between October 1990 and April 1991, the Ministry of Labour had recognised various trade unions in the free trade zones, five of these belonging to the CNDT. In undertakings like Westinghouse, Electric Corporation, Undergarment Fashion, Silvanya and others, once the existence of a union was known, there were dismissals of both union members and officials. The companies in these zones simply did not tolerate trade unions. In the recent past, the labour authorities had assisted these undertakings, which were mainly multinationals.

The Workers' member of the United Kingdom found that arguments were intruding into this discussion which did not affect the case whatsoever. The Government representative had indicated his intentions, and the speaker did not think that any statement made by the Employers about the right to strike – which were not shared by the Workers – should be included in the conclusions of the present Committee. He also did not agree with the suggestion of the Government member of Germany that no reference should be made to the Committee on Freedom of Association in the conclusions. The speaker could refer to conclusions reached last year where reference was indeed made to the Committee on Freedom of Association. He did not believe that new principles should intrude into the discussion of the case where the Government representative had already indicated his willingness to conform with the recommendations made by the Committee of Experts.

The Employers' member of the United States noted that reference had been made to several United States multinationals operating in export processing zones in the Dominican Republic and informed the present Committee that the United States Government, as part of its obligations under the 1988 Trade Act, had conducted in 1990 a series of investigations on the practices of US multinationals in a variety of export processing zones around the world, including the Dominican Republic. The conclusions of those studies were basically that US multinationals had exemplary practices as regarded the basic human rights standards of the ILO, that is, freedom of association, the right to organise, forced labour, occupational safety and health and child labour.

The Committee took note of the written and oral information provided by the Government and of the discussion which had taken place in the present Committee. It noted that in 1985 a direct contacts mission had prepared, in agreement with the Government, draft amendments in order to remove the serious divergencies existing between the legislation and the provisions of Conventions Nos. 87 and 98 in order to give effect to the comments made by the Committee of Experts. The Committee also noted that a new direct contacts mission had recently visited the Dominican Republic. It observed that several complaints concerning violations of freedom of association pointing to anti-union discrimination had been recently examined by the Committee on Freedom of Association. The Committee noted that the new Law on the Public Service, promulgated in May 1991, recognised the right of freedom of association for public servants. In addition, it noted with interest the assurances provided by the Government representative, according to which a draft Labour Code had been discussed with the social partners at a seminar held under the auspices of the ILO, in order to satisfy the comments of the Committee of Experts and to ensure full implementation of the provisions of these Conventions. The Committee trusted that the good provisions mentioned by the Government would come into force very shortly and would make it possible for the Committee of Experts and the present Committee to note real progress next year.

Document No. 249

ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/47-24/48 (Guatemala)

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Guatemala (ratification: 1952). A Government representative of Guatemala stated that his Government received with interest the observation made by the Committee of Experts on the application of Convention No. 87. He noted, however, that certain clarifications were necessary in the following general categories: (a) questions which are considered to be resolved by the new Constitution of the Republic leaving only the need to derogate these provisions by the creation of new laws as requested by the Committee of Experts; (b) the provisions which were already expressly repealed; and (c) a specific case where the Constitution is in contradiction with the Convention. The speaker pointed out that efforts had already been made, with the assistance of the ILO, to update the consolidated labour legislation and thus bring it into conformity with international labour standards. As a result of these efforts, the previous Government presented the Congress of the Republic with a draft of a substantive and a procedural Labour Code, as well as a basic Labour and Social Security Act. However, the legislative process discontinued due to the fact that various sectors of society had declared themselves against these draft texts. Nevertheless, the new Government had begun and implemented a Social Covenant as a general expression of tripartism, never before seen in the country. Within the framework of this Social Covenant, the Government was taking steps towards the institutionalisation and harmonisation of the country's labour legislation with international labour Conventions. The speaker pointed out that, taking into consideration the political circumstances which complicated the process of promulgation of a new labour legislation, the Minister of Labour and Welfare was promoting, on the basis of tripartite consultations, the approval of a certain number of transitional reform measures to the Labour Code. This would be done in a way so as to incorporate international labour standards in the law. In this way, these amendments, together with the draft codes based upon the tripartite consultation process under the Social Covenant, were part of a global strategy for improving the legislation. The speaker gave assurances that his Government would send all the documentation pertinent to this case to the Committee of Experts and the Minister of Labour and Welfare would see to it that the discrepencies which had been pointed out and which were not contrary to the Constitution of the Republic would be eliminated by the labour legislation once the Social Covenant was concluded. The Government representative recalled that the present Labour Code, which is now being revised, dated back to 1948 and the Constitution of the Republic entered into force in January of 1986. Many of the observations made by the Committee of Experts would be resolved by the Constitution. He concluded by stating that ILO assistance would be welcome to conclude the current reform of the labour law in the most technical and efficient way possible. This assistance was being discussed with the ILO.

The Workers' members noted the information provided by the Government concerning the changes made since the last time this case was discussed. They recalled the discrepancies noted in the Committee of Experts' report between the legislation and the provisions of the Convention. In this respect, they noted that there were six essential problems: (1) the strict supervision of trade union activities by the Government; (2) the dissolution of trade unions that have taken part in matters concerning electoral or party politics; (3) the limitation on the eligibility for trade union office to Guatemalan nationals only; (4) the requirement of a two-thirds majority vote for the calling of a strike; (5) the prohibition of strikes by agricultural workers at harvest time by workers in enterprises or services in which the Government considered that a suspension of their work would seriously affect the national economy (they recalled in this regard that the Committee of Experts had determined that the right to strike could only be limited for essential services, i.e. those services in which a strike would endanger the life, personal safety or health of whole or part of the population); and (6) the heavy prison sentences for those who carry out acts intended to paralyse or distub the functioning of enterprises contributing to the development of the national economy with a view to jeopardising national production. They noted that the Government representative's statement had demonstrated that more progress was made than reflected in the Committee of Experts' report as apparently the draft Labour Code was presently being discussed in the legislature. Finally, they requested a clarification from the Government representative concerning the pursuance of tripartite consultations to resolve these problems.

The Employers' members recalled that this case had been discussed several times in the early 1980s and that three years had passed since it was last discussed. They generally associated themselves with the comments made by the Workers' members, but declared their reservation concerning the right to strike as they were of the opinion that the details concerning this right could not be deduced from Convention No. 87. In their opinion, this case also demostrated that the formula defining essential services was very narrow and did not take into consideration the particularities of a given case. They wondered whether, in a country which depends on agricultural products, it would not be useful to consider harvesting as an essential service. In spite of this particular point, they note that there were still a number of contradictions between the legislation and the provisions of the Convention. They noted

the Government representative's indication that amendments to the legislation and in particular to the Labour Code were being elaborated. They recommended that the Government be asked to accelerate this process and to provide these texts as soon as possible so that the Committee of Experts could supervise the application of the Convention.

The Government representative of Guatemala welcomed the interest reflected in this type of concrete questioning. He pointed out that, as concerned the strict supervision of trade union activities by the Government, the participation in political parties of trade union leaders, the problems concerning eligibility of non-nationals for trade union office, the majority necessary to call a strike, the prohibition of strikes by agricultural workers and strike in essential services – these elements and circumstances were taken into account in the Constitution of 1986. The restrictive standards bearing upon freedom of association had been repealed or derogated by this later law. The Government would make an effort to ensure that the process followed for reviewing the legislation would bring the country standards into full conformity with the Convention. The Government respected certain trade union rights which were discretionary, such as the election of trade union officers. As concerned the sanctions against those who paralyse the national economy, he pointed out that the Constitution was very clear about the types of conduct which were illegal and the minimum rights guaranteed to the worker, including the right to strike. As regards the question concerning whether an agricultural country, such as Guatemala, could restrict the right to strike of agricultural workers, he pointed out that his country adopted the universally recognised definition of the international bodies on essential services which only limited the right when it could endanger the health, safety and welfare of the population. He reitered that in his country there was the conviction that the legislation should be changed so as to be in compliance with international labour Conventions, but that these changes should be made in a spirit of tripartism and consensus in conformity with the well-being of all sectors of the country.

The Workers' members thanked the Government for the clarifications given to the questions raised and requested that the new legislation be sent to the Office for review as soon as possible.

The Committee took note of the detailed information communicated by the Government representative and the discussion which had taken place in the Committee. It recalled that the Committee of Experts had been asking the Government for a number of years to remedy the serious divergencies which exist between national law and practice and the Convention. Taking note that the draft Labour Code, which was to take into account the observations made by the Committee of Experts, was in the process of being adopted by the Congress of the Republic, the Committee expressed the firm hope that the Government would report in its next report on the concrete measures taken to bring its law and practice into conformity with the requirements of the Convention which it had ratified almost 40 years ago.

Document No. 250

ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/50-24/51 (Nigeria)

International Labour Conference

Provisional Record

Seventy-eighth Session, Geneva, 1991

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Nigeria (ratification: 1960). A Government representative stated, with reference to the first point raised by the Experts concerning a single central trade union established by law under which certain registered unions were affiliated to the Nigerian Labour Congress (NLC), that the four central labour organisations had of their own volition decided to merge to form the NLC and, by virtue of the Trade Union Decree of 1978, his Government had merely formalised the organisation which the workers had established themselves. The NLC was currently restructuring itself, from its present 41 industrial unions, to 22 industrial unions and he stressed that the Government had no hand in the present restructuring exercise. He believed that the Workers' member of Nigeria present in the present Committee was in a better position to speak on that particular issue.

Secondly, regarding the denial of trade union rights of certain categories of workers, he pointed out that in the local conditions this was based on the security nature of the services which the affected workers were providing: they were employed in services strategic to the Nigerian economy. In any event, he gave the assurance that this aspect of the labour legislation was currently under review by the National Labour Advisory Council.

Thirdly, regarding the broad powers of the Registrar to supervise the accounts of trade unions, he stated that the law merely requested the unions to submit their audited accounts to the Registrar once a year. By means of the compulsory check-off system, the law empowered employers to deduct union dues from workers' wages at the source; these deducted amounts were paid into the accounts of the appropriate union. Therefore, the Registrar did not look into the details of how the money was spent because the accounts had to be audited by qualified registered accountants. The measure was merely to ensure that trade union accounts were in fact audited. The Registrar had the duty to remind unions to submit their accounts to auditors of their choice if they did not do so of their own volition. The speaker noted, however, that any worker who so wished could opt out of the compulsory check-off system by informing his employer in writing.

Fourthly, on the question of strikes, he noted that there was a procedure laid down by law which unions had to follow if they intended to take strike action. For example, if the relevant collective agreement had provisions for the settlement of disputes, they should be exhausted, failing which this fact should be communicated to the Minister of Employment, Labour and Productivity who referred the dispute to an arbitrator, conciliator or industrial arbitration panel. If the dispute could still not be resolved, it was referred to the industrial courts. In spite of all these procedures, workers still went on strike in Nigeria; but the Government believed there was always a way of reaching agreement with trade union leaders through consultation, conciliation, arbitration, persuasion or adjudication.

Finally, referring to Decree No. 35 of 1989 which prohibited international affiliation of trade unions and directed the central trade union, industrial unions and employers' associations to cease any existing international affiliation inconsistent with the provisions of the Decree, he was pleased to inform the Committee that his Government had decided to repeal this law. The Attorney-General was currently processing the publication of the legal instrument of repeal which would, he expected, be released in due course.

The Workers' members noted that the comments made by the Committee of Experts were not new and had been raised for many years. It was clear that these were very important issues concerning the application of the Convention: the single trade union system; non-recognition of the trade union rights of certain categories of workers; the broad powers of the Registrar to supervise union accounts; and restrictions on the right to strike. Although it had been noted that, since 1989, the National Labour Advisory Council had been examining how to adapt the legislation to bring it into conformity with the Convention, it was surprising to read in the observation that while this very examination was going on, Decree No. 35 of 1989 and other completely contradictory measures had been adopted. Regarding this ban on any international affiliation, the Government representative had stated that this Decree would be abrogated; as soon as this was officially done, the Government should inform the ILO so that this point could be examined. As for the other points raised by the Committee of Experts, they believed that the Government had to be urged to accelerate matters so as to bring the legislation into full conformity with the provisions of the Convention.

The Employers' members agreed that these questions had been discussed for many years, at least three times in the last decade in the present Committee. They supported all the points that had been mentioned: the single trade union system; denial of the right to organise for certain workers; and the considerable interference in financial matters. With the exception of the restriction on strike action, they shared the view that there had been a clear violation of the Convention in this particular case. They wanted to hear the Workers' member of Nigeria on the question of the single trade union system, although they were sure that he would defend it. It was, however, a question of what the Convention provided, namely that there should be the possibility for the setting up of free unions and that this should not be restricted by law. This was obviously a problem in the present case. The 1989 Decree made the situation even more acute. Its repeal, as announced by the Government representative, would not resolve the other problems. They therefore believed that the present Committee should insist on a change in the legal situation in the very near future and that the case should be taken up once again very soon. They suggested that the conclusions should reflect the present Committee's reservation of the right to take steps if changes did not occur very rapidly.

The Workers' member of Nigeria stressed that, before the Trade Unions Decree No. 22 of 1987, there had been 1,500 trade unions in Nigeria which had been exploited by employers who, at one time or another, encouraged the unions to fight amongst themselves using "divide and rule" tactics. The workers had therefore believed that it was better to merge these unions, instead of allowing them to be exploited by various employers. A 1975 conference decided on such a merger and, in 1978, they requested legislation to recognise the one central labour organisation and the merging of 1,500 trade unions into 41 industrial unions. He believed this was good for the workers, good for the trade unions and good for the country. He thus asked the ILO to endorse this kind of arrangement. He added that, after almost three years of debate, a decision had been democratically taken to reduce the new 41 industrial unions to 22. This decision had been submitted to both the Federal Government and the employers in the tripartite national body which endorsed such arrangements through legislation. Such a legislative endorsement was necessary, otherwise there would be problems in negotiations with employers. Regarding the non-recognition of the right to organise of certain categories of workers (in the Mint, the Central Bank, external telecommunications and the customs and excise service), he believed that this was a gross violation of the Convention. The workers would continue to put pressure on the Government to see that workers in all these establishments would be allowed to unionise. He did not accept the Government's argument concerning customs and excise workers, according to which they could not organise in trade unions because they carried arms. The nature of their work entitled them to carry arms, but they were not members of the armed forces. As regarded the ban on international affiliation, his organisation had taken the matter up with the Government and the Government had agreed to repeal Decree No. 35. This was because the workers believed that if employers in Nigeria were allowed to affiliate to their counterparts throughout the world, there was no reason why workers should be discriminated against in affiliating with their colleagues in other parts of the world. But he was satisfied that the Government was taking the practical steps to have the Decree repealed.

The Government representative requested clarification from the Employers' members concerning their statement on strikes in essential services. Referring to the Workers' member of Nigeria, the speaker pointed out that, to the best of his knowledge, the documents concerning the restructuring of the NLC's affiliates into 22 industrial unions had not yet reached the Ministry in Lagos. Despite that, he was sure that the Government would agree to register the 22 industrial unions involved, because the restructuring had been done of the workers' own volition and the Government had no right to question such exercises. He thus assured the Nigerian Workers' member that the Government would not go against the NLC's wishes. On the question of the right to organise of customs workers and other workers in sensitive areas, his Government believed that a certain degree of caution should be taken in allowing persons carrying arms to unionise. He stressed that his Government was not trying to shy away from the Conventions it had ratified; it believed strongly in those Conventions and wanted to implement their provisions to the letter. However, situations in other parts of the world had to be considered. Lastly, he repeated that the Government was in the process of having Decree No. 35 repealed, but noted that it took time to respect all the procedures that had to be undertaken, including reference from the Ministry of Labour to the Ministry of Justice. He hoped that before the next session of the Conference the Decree would be repealed.

The Workers' member of Nigeria pointed out that the documents concerning the restructuring of the trade union movement had been forwarded to the Government. On the question of adaptability to local conditions in which the customs and excise workers were employed, he believed there was nothing in Nigeria to prohibit the strict observance of the Convention. The reason

for them carrying arms was well-known: there were many smugglers crossing the boarders carrying arms, and customs and immigration staff needed to be equipped in order to be able to do their work properly.

The Employers' members explained their reservation in reply to the Government representative's query: they felt that the Convention could be used as a basis from which to derive the right to strike, but believed that the limits on this right were not indicated expressly therein and that the Experts' views on limiting strikes only in essential services in the strict sense of the term could not be read from the Convention. This was because the wording did not so state and because the Convention had to be interpreted, like all international treaties, in accordance with the Vienna Convention on the Law of Treaties.

The Committee noted the report of the Committee of Experts and the oral information provided by the Government representative. It expressed its concern at the fact that the Government did not seem to have made any progress towards bringing its law and practice into conformity with the requirements of Articles 2 and 3 of the Convention concerning, in particular, the single trade union system established in the legislation, the non-recognition of the right to organise of certain categories of workers, and restrictions on the activities of trade unions. The Committee recalled the persistance of these various discrepancies for many years. In addition, it noted with concern that Decree No. 35 of 1989 constituted a serious violation of the right of workers' and employers' organisations to affiliate with the international organisations of their choice, as guaranteed in Article 5 of the Convention. It expressed the firm hope that the Government would take in a very short time the necessary steps to ensure full application of the Convention and, in particular, that it would abrogate Decree No. 35 in the near future as it had promised to do on several occasions and that it would communicate the repealing text to the ILO as soon as it was adopted. If it was the case that the situation did not evolve favourably in the near future, the Committee would have to consider other action or comments if this were not the case.

Document No. 251

ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/52-24/55 (Panama)

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Panama (ratification: 1958). The Government suplied the following information:

1. On the alleged high number of members required for the creation of a union (50 workers or ten employers under section 344 of the Labour Code), this requirement does not limit the right to unionise which is universally recognised because the Conven-

tion does not lay down minimum or maximum levels for the formation of a union and since there is no recommendation by the Committee of Experts on this point. In article 64 of the National Constitution, the number or amount that is set out in section 344 of the Labour Code is aimed only at strengthening union organisations so that they can effectively use the right to bargain as a basis for the collective right centred on the principle of the majority.

The current tendency of occupational organisations is to move towards the creation of industry-type unions so as to be able to pursue their activities throughout the national territory; this aim requires the grouping together of labour forces in numbers superior to those laid down by law. The union organisations themselves are against a reduction in the number of members required for the creation of a union, because this involves a splintering of the working class and a serious weakening of the workers' movement.

2. As regards the comment that 75 per cent of union members must be Panamanian (contained in s. 347 of the Labour Code), this is not a discriminatory requirement but rather one which belongs to the aspirations of organisations of workers because economic activity had been in the hands of foreigners, a domain that was extending into commercial activities where the workers involved were not Panamanian. In an effort to help nationals, standards were adopted setting percentages to enable Panamanians to work and to guarantee the right to organise. Apart from this criterion, there is no restriction or ban on unions, in their own organisations, to allow foreigners to become members, provided that their statutes permit this. This situation is viable since the legislation does not consider persons to be foreigners if their spouses are Panamanian or if they have resided in the country for ten years or more. The Government considers that none of the Articles in the Convention contains provisions on the inclusion or exclusion of, or ban restrictions on the membership of trade unions of foreigners. It adds, however, that none of the current trade union legislation in Panama (Labour Code) contains any prohibition or obstacle affecting the right to unionise of foreigners because of their nationality, so long as the level of 25 per cent of members of the union in question is not exceeded, as is provided in articles 17 and 20 of the National Constitution which reserve certain activities for Panamanian nationals and article 39 of the Magna Carta which guarantees freedom of association.

3. Regarding the observation on the automatic removal from office of a dismissed trade union official (s. 359 of the Labour Code), the Government considers it normal that the mandate of an officer of a works union ends when he is no longer a member because he has ceased to be employed by the enterprise. The Government admits that it is not clear in the Labour Code what happens to leaders of an industry level or mixed union and that is why section 359 of the Code is not applied to them. According to the Government, in addition, works unions could be led and/or dominated by former employees of the enterprise, which would be illogical and impractical.

4. Regarding the wide powers of supervision by the authorities over the records and accounts of trade unions (s. 376 (4) of the Labour Code), the Government indicates that the State does not control trade union activities merely by undertaking accounting checks and by registering minutes, as is laid down in the section referred to, since the unions are of public interest and, consequently, the Ministry of Labour and Social Welfare, being a state body, is obliged to promote the creation of these organisations and to certify their existence, validity and guarantee their protection. According to the Government, it is not clear that such powers of supervision over this union documentation exist since the "minutes registers" are limited to those minutes recording changes in or the election of executive committees, amendments to the statutes and authorisations to exercise rights vis-à-vis third persons, as a basic principle for the publicity of and authentication of the legal personality and the legal representatives of the organisation in question.

According to the Government, the Ministry only intervenes when challenges are made by the members themselves to the election of an executive committee, using ordinary procedures and with the knowledge of the labour judges. There is no control over union accounts since the examination of the books is *only* aimed at verifying complaints of mismanagement of union funds or of abuse of office so as to establish the level of accounting standards and honesty in the management of these accounts. The Ministry cannot suspend any union leader "for mismanagement of union funds" or "undue appropriation" of them. Protection of the integrity of union "management" prevents the Ministry from being able to make court challenges of any kind, a situation that has been the principal reason for corruption and the unions' loss of prestige.

In addition, the formality of lodging registration requests for new unions is aimed at giving them protection or immunity *(fuero sindical)* to all their members, as set out in sections 381 and 385 of the Labour Code. Without this requirement, that unions being formed lodge registration applications with the Ministry, such protection would not be effective.

5. With regard to the exclusion of public servants from the scope of the Labour Code and consequently from the right to organise and to bargain collectively (s. 2 (2) of the Labour Code), the Government states that Chapters 2 and 3 of Title XI of the 1946 National Constitution lay down the basic principles of personnel administration and the functioning of that administration, respectively. These constitutional provisions were the basis for the adoption of the Act on Administrative Careers in 1963 which was amended by Cabinet Decree in 1968 so as to repeal the sections concerning the stability of employment of public employees. The Labour Code could not be applied to public servants except for those exceptions allowing unionisation contained in Act No. 8 of 25 February 1975 and Acts Nos. 34 and 40 of February 1979 which apply, respectively, to state enterprises such as IRHE, INTEL and the National Port and Railways Authority of Panama. There are other administrative careers permitted by article 300 of the National Constitution, such as the judiciary (covered by the Judicial Code), teaching in the national education system, the diplomatic service, the health service, the act on nurses and auxiliary hospital staff, the act on laboratory assistants, the act on firefighters, post and telegraph employees, employees of the National Bank of Panama, etc. These are special laws which are not amended by the act on administrative careers. In addition, Panama has not ratified Convention No. 151 on the right to organise of public employees, and is thus not bound by that Convention. Nor is there a violation of Conventions Nos. 87 and 98 which have nothing to do with the right to organise of public employees, but rather regulate union relations between workers in private undertakings and employers, relations which are fully covered by the Labour Code.

6. With regard to the comments of the Committee of Experts on Act No. 13 of 11 October 1990 which supposedly "sets out restrictions on the right to strike" and to bargain collectively, the Government states that the possibility of resorting to arbitration, using the labour authorities in cases of a prolonged strike which could produce serious economic disruption in an undertaking, is a discretionary option. It can be used following a summary verification of this disruption, with the workers being given a hearing; this is provided for in the Act as a transitional provision lasting three years. To date it has not been used. This discretion is not new to Panamanian legislation. Previously, Act No. 95 of 1976 introduced a similar option.

7. Regarding the comments on Act No. 25 of 14 December 1990, the Government states that this is an Act concerned with law and order against subversive acts by public servants; that it is a temporary enactment in force until 31 December 1991; that it does not involve dismissal or sanctioning of trade union leaders because of their office, but the sanctioning of public servants who participated in a military plot to overthrow the Government in the following ways: the organisers of the movement exhorted the population to undertake a permanent general work stoppage until the Government fell, and communications and dialogue took place between public servants organising the illegal stoppage and a mutineer after the police central headquarters had been taken. Only those public servants who engaged in physical violence against other officials by impeding their access to workplaces or who damaged state property have been sanctioned. The Government states that irregular "civil associations" are involved, set up under the provisions of the civil code as civic bodies and charities which have illegally tried to operate as ministerial unions and as the National Federation of Public Servants. It was not a labour "strike" since there was no indication that a labour dispute existed, but it was an illegal "general work stoppage".

At the end of March, the State Prosecutor of the Supreme Court considered unconstitutional only the subsection of article 2 of the Constitution which tried to establish that "The Executive, through the Cabinet Council, shall determine whether actions or events are to be considered as attacks on democracy and the constitutional order of the State», on the grounds that this power is a matter of law. On 23 May 1991, the full Supreme Court delivered a judgement concerning the petition claiming unconstitutionality lodged against Act No. 25 of 1990 by several trade union leaders and ex-employees of IRHE and INTEL; the judgement upheld the constitutionality of all provisions of Act No. 25 except as regards the above-mentioned subsection of article 2 of the Constitution.

In addition, a Government representative reiterated all of the written information communicated by his Government. He

further referred to the difficulties encountered by his Government in complying with its obligations of sending the reports due in 1990 and indicated that 21 reports on the Conventions have been sent since March. With respect to the observations of the Committee of Experts concerning Act No. 13 of 11 October 1990 and Act No. 25 of 14 December 1990, he considered that these fall outside the reporting period and should be excluded from the present examination until such time as the Committee of Experts can examine the very significant documentation submitted with the reports of 1990 and 1991. Nevertheless, he took the opportunity to inform the Committee that Act No. 25 mentioned above does not involve any penal matters, nor provide for the detention of any person or create any type of discrimination. The detailed analysis of this Act made by the Attorney-General in April 1991 and the Supreme Court decision (May 1991) confirm that the Act does not violate constitutional principles or any human rights. It provides for administrative appeal, as well as for appeal before the Supreme Court. It also clearly defines the constitutionality of the retroactive nature of the Act, since it is a public order Act which normally can be applied retroactively without any time-limit. It was applied retroactively at the time of an unlimited general strike, about which a series of information was communicated for the Case No. 1569 examined by the Freedom of Association Committee.

As regards provisions of the Labour Code referred to by the Committee of Experts, the speaker indicated that the requirement of high number of members for the creation of a union (50 workers or ten employers under section 344 of the Labour Code) does not limit the right to unionise which if universally recognised because the Convention does not lay down minimum or maximum levels for the formation of a union and since there is no recommendation by the Committee of Experts on this point.

As regards the comment that 75 per cent of union members must be Panamanian (contained in section 347 of the Labour Code), this is not a discriminatory requirement but rather one which belongs to the aspirations of organisations of workers because economic activity had been in the hands of foreigners, a domain that was extending into commercial activities. Apart from this criterion, there is no restriction or ban on unions, in their own organisations, to allow foreigners to become members, provided that their statutes permit this.

Regarding the observation on the automatic removal from office of a dismissed trade union official (section 359 of the Labour Code), the Government considers it normal that the mandate of an officer of a works union ends when he is no longer a member because he has ceased to be employed by the enterprise. The Government admits that it is not clear in the Labour Code what happens to leaders of an industry-level or mixed union that this is why section 359 of the Code is not applied to them.

Regarding the wide powers of supervision by the authorities over the records and accounts of trade unions (section 376(4) of the Labour Code), the speaker indicated that the Ministry only intervenes when challenges are made by the members themselves to the election of an executive committee, and that there is no control over union accounts since the examination of the books is *only* aimed at verifying complaints of mismanagement of union funds or of abuse of office so as to establish the level of accounting standards and honesty in the management of these accounts. His Government is studying the elaboration of a Decree concerning section 376 of the Labour Code to determine the documents and acts which should be communicated to the Minister of Labour for keeping in the archives in order to avoid the powers of the authorities being considered to be too wide.

In addition, the formality of lodging registration requests for new unions is aimed at giving them protection or immunity *(fuero sindical)* to all their members, as set out in sections 381 and 385 of the Labour Code.

With regard to the observation concerning the exclusion of public servants from the scope of the Labour Code and consequently from the right to organise and to bargain collectively, the speaker stated that the 1946 Constitution lay down the basic principles of personnel administration and the functioning of that administration. These constitutional provisions were the basis for the adoption of the Act on Administrative Careers in 1963. There are other administrative careers permitted by article 300 of the National Constitution, such as the judiciary and teaching in the national education system.

With regard to Convention No. 98 the speaker stated that Act No. 13 of 1990 was clothed in the concept of "stabilisation policies" applicable in exceptional and temporary conditions to enable economic recovery and new employment generation. The Act recognises agreed pay increases and its application is based on their annual mean, thus guaranteeing protection of the workers; such increases would not be possible through negotiation because of the economy's precarious state. It also recognises temporary accords within collective agreements and permits new agreements to be negotiated directly, so that it does not prohibit or limit the right to negotiate collective labour agreements if the parties agree.

The Workers' members noted that the Committee of Experts' comments date back to 1967 without any positive reply from the Government and recalled that the Committee expressed its hope in 1989 that the legislation would be brought soon in conformity with the Convention. They observed that the information communicated by the Government verbally and in writing does not contain a reply and does not allow to note the progress made. On the contrary, acts setting out restrictions on the freedom of association and the collective bargaining were adopted in 1990. Thus, Act No. 25 of 14 December 1990 greatly prejudices the exercise of the right of associations of public employees to organise their activities, including through strikes. Noting that in its replies the Government stated that Conventions Nos. 87 and 98 have nothing to do with the right to organise with respect to public administration employees, the Workers' members asked how such arguments can be put forward after so many years and after the Committee expressed the hope in 1989 that the Government would take into consideration the Committee of experts' comments. Noting the lack of progress, as well as the information supplied by the Government, the Workers' members proposed to mention this case in a special paragraph of the Committee's report.

The Employers' members expressed their concern about this case, which has been dealt with on many occasions already. In fact, very little has changed. As can be seen from the information provided by the Government verbally and in writing, there is obviously no intention to undertake any changes at all. The Employers' members referred to the points which the Committee of Experts made in the beginning of its comments and considered them to be very clearly violations against the principles of freedom of association set out in Convention No. 87. They expressed the opinion that there is no reason why the public servant should be deprived of the right of freedom of association; there is no reason either in the requirement that 75 per cent of union members shall be Panamanian, even when the Government representative says that this can be traced back to the fact that in Panama there are many foreigners who are employed. It is not logical to exclude foreigners from participation in professional organisations, and the automatic removal from office of a trade union officer in the event of his dismissal is also a very clear violation of the Convention.

The Employers' members considered that it was not possible to determine whether the right to strike had been subjected to excessive restrictions, since the Experts had used the wrong yardstick. With regard to the only restrictions it held acceptable for essential services in the strict sense, the Committee of Experts had rightly referred to "its" principles; these were, in any case, not the principles of Convention No. 87. In this regard, the Employers' members referred to their opinion expressed in the course of the general discussion on the question of interpretation of ILC Conventions. But as regards the other points, they pointed out that the limitations imposed on freedom of association are very clear violations of Convention No. 87. With regard to the promotion of collective bargaining there also remains quite a lot to be done, taking into account the restrictions from carrying out collective bargaining for the public servants and legislative attacks on existing collective bargaining.

So, as far as Convention No. 98 is concerned, there is not any improvement either. This case has been dealt with for decades, and there is absolutely no evidence that in the foreseeable future anything is going to change. The Employers' members proposed to mention this case in a special paragraph of the Committee's report.

The Workers' member of Panama stated that Act No. 13 of 1990 violates the freedom of association by providing for the extension of current collective agreements and that the application of Act No. 25 has resulted in the dismissal of a large number of workers in the public sector. He emphasised that workers suffer from the consequences of the disorder which was due to the events which took place in his country. The speaker confirmed his devotion to tripartism and expressed the hope that the Committee of Experts' comments can be taken into account by the Government to ensure compliance with the Conventions. He expressed the opinion that a direct contacts mission should visit the country in order to find out what is actually going on there.

The Workers' member of Germany referred to the comments made by the Employers' members concerning the interpretation of the right to strike by the Committee of Experts and expressed the opinion that it should have been part of the general discussion, otherwise the work of the Committee on individual cases might be held up by constantly repeated reservations. He pointed out that discussions cannot be undertaken unless the principles which apply to a particular Convention are accepted.

The Employers' members stated that, as they said during the general discussion, it is unavoidable, while examining a case in

order to find out whether a government has fulfilled its obligations or not, to look at the legal questions.

The Government representative stated that the Labour Code now in force was adopted in 1972 and consequently comments made since 1967 have nothing to do with this Code which tried to include provisions of various international instruments. He also indicated that the documentation, with respect to Act No. 25 has been sent for the Case No. 1569 under examination by the Committee on Freedom of Association, including a lot of evidence and documents which have not yet been analysed. The speaker considered it unfair to talk about a direct contacts mission to deal with Acts which have not yet been appropriately analysed by the Committee of Experts, nor should this case be mentioned in a "special paragraph" of the report of the present Committee because in only eighteen months of democratic rule there has not been enough time to rectify mistakes or legislations which were not in compliance with Conventions for over 20 years. He pointed out that his Government is not unwilling to bring the legislation into conformity with the Convention, but the fact that the labour sector is very distrustful of the Government does not allow any revision of the Labour Code. The speaker informed the Committee that his Government appealed for a national tripartite agreement with a view to amend some parts of the Labour Code in order to bring about the necessary economic recovery. He considered that a direct contacts mission is not justified at this stage.

The Committee took note of the information, both verbal and in writing, provided by the Government representative, as well as the discussion which took place in the Committee. It regretted that this information does not contain any new element which would make it possible to ensure a better application of the Convention. The Committee recalled that most of the comments made by the Committee of Experts date back to 1967. Bearing in mind the importance of the points raised in the comments which concern trade union rights as such, as well as the right to free collective bargaining, the Committee expressed its deep concern faced with the continuing number of serious divergencies between law and pratice, on the one hand, and Convention, on the other. The Committee urged the Government to adopt the necessary measures in the very near future in order to ensure full implementation of Conventions Nos. 87 and 98. While recalling the substance of its conclusions of 1989, the Committee trusts that specific measures in line with the observations made by the Committee of Experts can be observed next year.

The Committee decided to mention these conclusions in a special paragraph of its report.

Document No. 252

ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/48-27/52 (Colombia)

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Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Colombia (ratification : 1976). The Government communicated the following information :

The political Constitution prohibits the suspension and cancellation of the legal personality of trade union organisations, and it is appropriate to note that such a provision is also found in Act No. 50 of 1990.

However, the requirement that two-thirds of the members be Colombian in order to form a trade union, the alleged intervention in the internal administration of trade unions owing to the presence of public servants of the ministry at some meetings (particularly when they declare a strike), the requirement of Colombian nationality to be elected a trade union leader, the additional penalty of denying trade union office for a period up to three years where a judge has found a person responsible for the dissolution of a trade union, and the requirement that persons be of the respective occupation or profession in order to be elected as a trade union officer are matters which were fully referred to in the letter dated 25 October 1991 directed to the Director-General of the ILO (the Government has attached a copy of its letter).

The Government had requested in a letter dated 9 October 1991 sent to the Director-General of the ILO that – considering the importance of the matter – a Convention be adopted on the right to strike. The Government regrets that the Director-General wrote on 22 November 1991 that, for procedural reasons, he would not be able to include this significant matter on the agenda of the International Labour Conference in 1992 or 1993. The Government takes this opportunity to reiterate its request concerning the urgency of the adoption by the ILO of a Convention expressly concerning the right to strike. It is equally insisting on the fact that this right should not be derived from interpretations which, even if they are valid, are but the opinions of respectable jurists. In this sense it mentions that there are restrictions on the right to strike taking into account

that the Labour Minister and the President of the Republic can invoke the arbitration tribunal to resolve the conflicts after 60 days of strike or if the strike affects the whole of the national economy.

In this respect, it is very illustrative to mention the jurisprudence of the Supreme Court of Justice which has considered Law No. 50 of 1990 to be in conformity with the Constitution and has expressed itself on the above-mentioned question in the following manner :

The trade union movement, particularly in moments of its apogee, had always wanted the right to strike to be absolute and unlimited so that collective disputes could only be resolved by its unconditional will ; nevertheless, it was recognised that strikes prejudice not only the interests of workers who rely on them to fulfil their aims, but also the aims of the enterprise and, in general, those of the economic order which also deserve the same protection ; it was necessary, consequently, to seek a balance between the opposed interests and this was what was understood by those who wrote the Constitution of 1936 which did not permit strikes in the public service and left it to the law to regulate the recourse to strikes in these services as was very judiciously done in the case examined here ; the well-known image of the industrial institutions abandoned, useless, left indefinitely to deterioration and unproductivity, as permanent witnesses to the conflict which nobody wanted to resolve to recuperate lost goods and emloyment itself, led the law to preclude the general impoverishment and social damage made by the obstinate attitude of the parties, by means of alternative methods which do not touch the protection due to all and which now is specifically supported by article 55 of the Constitution according to which " the State has responsibility to promote ... other means for the peaceful solution of collective industrial disputes " as the arbitration court precisely does. (Supreme Court of Justice, Plenary, Decision of 26 September 1991.)

As regards the right to strike, article 56 of the Constitution provides :

The right to strike is guaranteed except in essential services as defined by legislation.

The law shall regulate the right to strike.

A standing committee composed of Government and employers' and workers' representatives shall promote good industrial relations, contribute to the resolution of collective labour disputes and coordinate wages policies and labour policies. Its composition and functioning shall be determined by law.

In performance of this constitutional requirement, the Government has, through the Ministry of Labour and Social Security, called a meeting of employers' and workers' representatives to conclude an agreement on the composition and functions of this standing committee and presented a Bill to the National Assembly on the subject in December 1991. When the law is enacted, the standing committee will, in conformity with the constitutional requirements and its purpose of coordinating labour policy, report on how legislation should be adapted to Conventions Nos. 87 and 98.

In addition, a Government representative, the Minister of Labour and Social Security, stated that the Committee of Experts had confirmed a major improvement in the application of the Convention, although it pointed out that provisions which could be incompatible with the Convention still existed. As regards the legislative requirements concerning nationality criticised by the Committee of Experts (two-thirds of the members had to be Colombian to establish a trade union and persons had to be Colombian for election to trade union Office), the new Constitution granted to foreigners the same rights and guarantees as nationals, but provided that the law could regulate these rights. The legislation therefore violates neither the Constitution nor the Convention. Foreigners could form unions, but could not control a union or be union leaders. This was based on national sovereignty, for example, to restrain foreign leaders from calling a strike in industries related to national security. Similar standards no doubt existed in most countries. The trade union central organisations of the country had not objected to the nationality requirements, any amendment to them could, however, be discussed when the tripartite labour commission, on which Congress was soon to pass regulations through a law, was set up. As for the supervision by public servants at meetings of unions of internal management (section 486 of the Labour Code), the presence of public servants was aimed at verifying fulfilment of the majority qualifications set out in trade union statutes, for example, for the calling of a strike. Trade unions frequently requested the presence of public servants when internal disputes occurred. In such cases, the role of the public servant was to collect evidence which would allow conflicts to be solved in the future. With regard to the suspension for up to three years of trade union officers who had been responsible for the dissolution of their unions (section 380(3) of the Code), Act No. 50 of 1990 removed the administrative power to suspend officers. It was now the judicial authority which verified whether a trade union leader was responsible for the dissolution or suspension of a union. Since such dissolution or suspension was ordered by the judicial authority, section 380(3) of the Code did not violate the Convention. With regard to the legislative requirements that persons belong to the trade or occupation in order to be a trade union leader, it was inherent in the nature of a trade union that its leaders belong to the same profession as its members. However, the Government did not insist on this point and was open to dialogue with the trade union confederations; it requested the ILO's technical assistance in this respect. As for the right to strike of federations and confederations, a draft law was before Congress on this subject and would be discussed. There had been developments in the country regarding the right to strike. The previous Constitution had recognised it, except in the public service. The new Constitution of 1991 only laid down restrictions on the right to strike in essential public services, to be defined by the legislature in a future law; there would be tripartite consultation on the subject. Moreover, the Government had requested the Governing Body of the ILO to study the possibility of a future Convention on the right to strike because at present it was the subject of conjured-up interpretations by the Committee of Experts or the Committee on Freedom of Association. The ILO should regulate the right to strike for the sake of judicial clarity. With regard to the power of the Minister of Labour and the President of the Republic to intervene in disputes (sections 448(3) and (4) and 450(1)(g) of the Code), this discretion resulted in the calling of a compulsory arbitration tribunal in conformity with the principles of the ILO supervisory bodies in cases where the right to strike was restricted. As for the possibility of dismissing trade union officers who had intevened or participated in an illegal strike (section 450(2) of the Code), the ILO supervisory bodies recognised the legitimacy of dismissal in cases of illegal strikes and the Convention provided that workers' organisations should respect the law of the land. Accordingly, this section did not violate the Convention.

The Workers' members referred to the report of the Committee of Experts which had drawn attention to the Government's report, the discussion of the Conference Committee in 1991, and the reports of the Committee on Freedom of Association as well as the 1991 direct contacts mission. They further referred to the Government's written replies and the statement by the Minister of Labour and Social Security. In describing the context in which this case was being discussed, they recalled the large number of trade unionists that had been killed or had disappeared and that the situation had not yet improved.

The Government representative made a point of order to the effect that the question of public order and disappearances and deaths concerned not only trade unionists but also politicians, peasants, soldiers, teachers, children, etc., and asked the speaker to limit himself to matters related to the Convention.

The Workers' members pointed out that the Committee of Experts had referred to this Committee's discussions in 1991 which had made mention of these matters. They pointed out the reason they made reference in their introductory remarks to the disappearances and deaths of trade unionists was in order to set the difficult context of freedom of association in Colombia. They noted the written information given by the Government as well as the legislative measures noted with satisfaction by the Committee of Experts in its report. They referred, however, to the points raised by the Committee of Experts that were incompatible with this Convention. With reference to the requirement that persons be Colombian for election to trade union office, they considered it was still a violation of the Convention even if membership of unions was not prohibited by such law as was pointed out by the Government representative. They welcomed, however, the statement made by the Minister that the Government would be discussing this matter with workers and further hoped that this contradiction with the Convention would be removed soon. With respect to the suspension for up to three years, with loss of trade union rights, of trade union offieers who have been responsible for the dissolution of their unions, they rejected the argument that this was not done by the Government but by the labour court because in any event it was the laws of the country that permitted such suspension and those laws are not in conformity with the Convention. They pointed out, as the Employers' members had done in the context of another case, that trade unionists were not asking for immunity from ordinary laws of the country but that this Convention protected them when they acted legally as trade unionists and the law of the country was in conformity with this Convention. Regarding the requirement that persons belong to the trade or occupation in order to be considered eligible for election to trade union office, they were not sure the Government representative had said the relevant laws had been repealed, despite the fact that most trade union officials were from the trade or occupation in question, they considered the law should not prohibit unions from appointing a full-time professional officer. Referring to the Minister's statement that the prohibition of strikes in the public service being repealed except in essential public services, they pointed out possible differences between the Committee of Experts and the Government in their understanding

of what constituted essential services. Even though the Convention, as had been stated, did not specifically refer to strikes, they said the Committee of Experts had made it quite clear that strikes should be allowed when workers were acting in defence of their economic and social interests, and any attempts to restrict such rights would be in contravention of the Convention. Without getting into a general debate on the right to strike, they wished to be on record as being in favour of the Committee of Experts long-standing interpretation of this Convention in this regard. They requested the Government representative to provide the Committee of Experts with a clear definition of what constituted essential public services to enable it to assess the extent of this exception. They stressed the views of the Committee of Experts that if strikes were restricted or prohibited, as in essential services, appropriate guarantee should be afforded such as impartial and speedy conciliation, mediation and arbitration procedures. With regard to the question of illegal strikes, they considered that the problem was not so much the strikes considered illegal under laws that were strictly in conformity with the Convention, but the laws that gave illegal strikes a very wide definition as did the Colombian laws and Constitution. They welcomed the information that was noted with interest by the Committee of Experts of the desire expressed by the Minister of Labour and Social Security to the direct contacts mission which took place in September 1991 to formally request the technical assistance of the ILO in the future process of reform of the labour legislation. They requested this Committee's conclusion to reflect their wish that as a result of this assistance the laws would soon be put in full conformity with the Convention.

The Employers' members felt that the report of the Committee of Experts on this question could be treated in three parts. The first part dealt with the points where national legislation was in conformity with the Convention. Two years ago the Conference Committee had considered devoting a special paragraph to Colombia. Today, however, a nomber of cases of progress could be observed. The second part pointed out the provision of the legislation that raised certain questions or where the Experts clearly considered these provisions to be contrary the the Convention. They acknowledged that the Government representative had provided some information relating to these points. As regards the requirement that two-thirds of the members be Colombian in order to establish a trade union, and the requirement that persons be Colombian for election to trade union office, while it was often the Labour Code that contained these requirements based on considerations of sovereignty, they noted that the Constitution of the country left the question open, as was often the case in other countries. They pointed out that, following the adoption of laws and directives of the European communities in this area, discrimination based on nationality did not exist in Europe. Given the Government's statement that it was ready to establish a dialogue with workers and employers on this subject, they considered its position to be flexible and that changes could be expected. As regards the suspension of trade union officers who were responsible for the dissolution of their unions, the Employers' members expressed doubts that these provisions would truly protect the trade union officers, and it seemed to them that it was up to the Government to examine this question and prepare amendments to the law in this respect. As regards the requirement that persons belong to the trade or occupation in order to be considered eligible for election to trade union office, they considered that this question was a subject for the union to determine internally and not a subject requiring legislative tratment. Given the statement by the Government representative that his Government was ready to engage in consultations on this subject as well, they felt that the tripartite committee he referred to earlier could be the appropriate body to take up these questions. With regard to the massive dismissals of workers in the public sector and the extended use of short-term contracts in the private sector, they felt there could be reasons other than that mentioned by the Committee of Experts, namely aimed at weakening the trade union movement, to justify such measures. However, they did not feel they should continue the discussion of this aspect at this stage. The third part of the report of the Committee of Experts related to the right to strike. The Government representative had stated that the Convention does not contain precise provisions in this respect and that the ILO should prepare an instrument on the rights and obligations relating to strikes and their restriction. The Employers' members noted that this year a draft resolution had suggested similar points but it had not been given a high priority. Therefore, in their view, it was necessary to limit the discussion to Convention No. 87 at this stage, as that instrument was the basis for the views of the Committee of Experts on this subject. Referring to earlier statements, they requested the Committee of Experts to re-examine their reasoning on the right to strike, as the results of such reasoning do not follow from the text of the Convention. They considered that the Convention should, as the Committee of Experts itself had indicated on other occasions, be strictly interpreted according to the Vienna Convention on the Law of Treaties, in particular articles 31 and 32 which, besides the context, require the taking into account of (a) all prior agreement regarding the interpretation of the treaty or the application of its provisions made between the parties and (b) all prior practice followed in the application of the treaty, using which the agreement between the parties for the interpretation of the treaty was established. The report of the Committee of Experts contained a large number of points on the application of the Convention throughout the world. It was clear from this report that the situation in various countries was so different that there were no common elements to be identified in the application or prohibition of the right to strike. Using the interpretation rules of the Vienna Convention it was clear that the rules supplied by the Committee of Experts for the interpretation of this Convention were clearly incorrect. Indeed, strikes not only adversedly affected employers, but third parties as well. The definition of the scope and the prohibition of strikes should not, as a result, be left to the decision of one party; only the State that had fully accepted the democratic rights and liberties of its citizens, should be responsible for the definition of the right to strike and its limitations. The Employers' members considered that this question, along with the others previously mentioned, justified that this question, along with the others previously mentioned, justified that a request be made to the Committee of Experts for it to once again re-examine its conclusions. The fact that the same conclusions had been reached concerning the Committee on Freedom of Association for many years did not make either these conclusions nor the principles derived from Convention No. 87 correct. Finally, as regards the right to strike in Colombia, the Employers' members disagreed with the conclusions reached by the Committee of Experts.

The Workers' member of Colombia indicated that, during the month of June 1992, nine trade unionists were assassinated and, contrary to the statement made by the Minister of Labour, the situation of unions in Colombia is very grave in law (as indicated by the Workers' members last year referring in particular to Law No. 50 of 1990) as well as in practice. The Government interfered in union activity because of the legal obligation imposed on unions to invite officials of the Ministry of Labour to attend their general assemblies. These officials went to the extent of asking all workers to present their identity papers when a vote was being taken to call a strike. In these circumstances the trade unionists felt obliged to meet secretly at night to avoid reprisals. Even if the new legislation gave automatically legal personality to unions the Ministry has continued to give its approval in a discretionary manner. The extended use of short-term contracts (between 15 days and 3 months) constituted a serious impediment to freedom of association because the workers involved recognised that their contract would not be renewed if they became members of a union. The great majority of strikes were declared illegal including those that took place in services that were clearly not essential. That was the case during the strike at the Hotel Teguendama following the dismissal of 24 workers when agreement could not be reached in the context of the proceedings signed to settle the labour dispute. Recently, trade union leaders were criminally tried for sabotage and their case given to "anonymous" judges having jurisdiction over cases of terrorism, for having called a strike in a telecommunications organisation. In addition, 27 workers were threatened with dismissal and the president of the organisation concerned as well as the Minister of Labour requested the withdrawal of the legal personality of the union and the suspension for up to three years of the trade union officers. In the oil sector a union was fined millions following a strike. In many instances strikes were called to ask for the right to life of union leaders. Finally, in view of the many grave violations of freedom of association in the country the speaker requested that this case be mentioned in a special paragraph of the report.

Another Workers' member of Colombia stated that the right to form unions did not exist in Colombia in law and in practice because of the elements he would enumerate which were direct and indirect threats to freedom of association. Employment contracts were given in the form of civil or commercial contracts; contracts of very short periods, which actually numbered 1,050,000, were permitted; the right to appeal decisions concerning requests for re-employment of workers with ten years of service but who were dismissed without reason; a grace period of ten years was given to enterprises during which they did not apply the same bargaining unit to all their subsidiaries, thus weakening the results of collective bargaining which would have been beneficial to trade unions; temporary work was facilitated and the establishment of organisations providing such services was promoted which hindered unionisation; collective agreements were concluded with non-unionised workers; Law No. 60 and its implementing decrees created systems of dismissal and mass retirements based on blackmail promoting retirements with negligible compensation for employees of the State (400,000 such retirements and dismissals are expected in the

coming two years); all public services, including land irrigation, the production of cement, the financial and petroleum sectors, were declared essential services with a view to making all strikes illegal; recently employers were permitted to make complaints under criminal law in the case of strikes in order to hinder the enjoyment of the right to work; penalties equivalent to minimum wages of 80 months were imposed on the petroleum workers' union for having organised two to three hours of work stoppage; strikes were considered crimes of terrorism and were submitted to "anonymous" judges during which procedures access to files was not permitted. Given the fact that laws and the practice in the country were not in conformity with the Convention and no progress has been observed and 102 trade union members and leaders were assassinated in the past year, the speaker requested that this case be mentioned in a special paragraph and that the ILO should provide technical assistance in the drafting of future labour legislation.

A Workers' member from Spain stated that the improvements in the laws mentioned by the Committee of Experts should be assessed in the context of the low level of respect given to union rights in the country. The speaker felt that provisions in the law regarding the supervision of the internal management of unions including the presence of public servants in the general assemblies were unacceptable because they indicated the prevailing lack of confidence in unions and the fact they were objects of suspicion unlike other organisations. He stated that unions were not anomalies in society but were necessary elements for progress in the country as indicated by the past 40 years of tripartism in Europe. In addition, he found the prohibition of strikes by federations and confrontations was unacceptable because the Convention gave the same rights to these organisations as it did to trade unions in general and constituted an essential part of freedom of association. Referring to the statements of the Minister of Labour on the interpretation of the right to strike made by the Committee of Experts he rejected the view that these interpretations were conjured up by them and said on the contrary that the Experts were as indispensable as judges and lawyers were to giving meaning to constitutional rights. Finally, he stated that a government that did not guarantee the right to life was not worthy of the name. He pointed out that in Colombia, as previous speakers indicated, trade unionists were assassinated and tortured constituting grave ciolations of the Convention. A Workers' member of Greece denied that trade union rights of foreigners were restricted in all countries for reasons of threats to the security of these countries and sighted the cases of Belgium and Germany where immigrant workers were part of the trade union leadership. The question of internal security in the context of a strike arose only with respect to certain particular sectors. He urged that the legislation be put in conformity with the Convention and that the Government should indicate its intentions in this regard and request the technical assistance of the ILO.

A Workers' member of France stated that the interventions previously made by the Colombian trade unionists demonstrated, if it was still necessary to do so, the extent of the difficulties with which the trade union movement was presently confronted in Colombia. He noted the limitations on trade unionism in this country: the problem of foreign workers, raised by the Workers' member of Greece; that of part-time workers, the number of which was constantly increasing; and the interference of political power in the trade union movement, notably through the presence of authorities in general meetings held to take strike votes. In respect of the request of the Employers' spokesman that the ILO adopt a Convention concerning the right to strike, he stated that this was not the ideal time to discuss the report and the views of the Committee of Experts concerning the scope of freedom of association. The right to freely organise their activities and to formulate their programme of action, provided for in Article 3 of the Convention, was a prerogative of trade union organisations, and for this reason since 1919 one had refrained from curbing or limiting its application by means of a Convention. The strict framing of the right to strike must be avoided and the provisions of the Convention respected. The Workers' member of France emphasised that the best way to assist the Government to develop legislation was to formulate firm requirements in the conclusions of this debate.

A Government member of Germany refered to the comments of the Committee of Experts on this case, and the written statement made by the Government and said that there were no means to verify many of the events described, and, although these matters were quite shocking, they did not constitute the matters upon which it was necessary for the Committee to pass judgement. He noted that considerable progress had been made, although there remained significant discrepancies between national legislation and the Convention. However, he emphasised that this view did not apply to everything that had been said, nor to all the findings of the Committee of Experts concerning restrictions placed on the right to strike in the public service.

Another Workers' member of Colombia stated that in his country there was neither justice, democracy or free trade unionism, and that he was required to speak before the Committee, because to remain silent would be to betray the confidence of those who had sent him to the Committee to defend their rights. In his country, there existed a so-called anonymous justice, which permitted the judging of someone without his knowing who was judging, who was accusing or of what one was accused. A number of trade union leaders of the national telecommunications company who has engged in a strike when it wanted to privatise the enterprise, were being judged today by anonymous judges. This year, at the time of the 500th anniversary of the discovery of America, indigenous persons had been murdered because they were looking for a bit of land where they could work, land which always had belonged to them. He considered that the Government of Colombia deserved to have the ease of this country included in a special paragraph.

A Workers' member of Uruguay referred to the consequenees of the policy of indiscriminate rationalisation and privatisation of public enterprises. He stated that the right to strike was an inalienable right, the tool which workers had in order to defend themselves, and for this reason restrictions on this right meant that there would be a reduction of its most important means of defence. With reference to that which had been stated by the Government representative to the effect that it would be appropriate to adopt an international labour standard on the right to strike, he asked whether what the Government representative wanted was to impose restrictions, and indicated that the Committee on Freedom of Association has stated that limitations on the right to strike could only be justified in cases in which strikes ceased to be peaceful. He recalled that in Colombia trade union leaders had been murdered, strikes were prohibited, there was no freedom of association, and Convention No. 87 was being contravened; he therefore asked the Committee to include the case of Colombia in a special paragraph.

The Government representative stated that his country guaranteed freedom of association to foreigners, but it was another matter to permit a group of foreigners to be able to dominate a trade union and to declare a strike. Regarding the clear constitutional definition in respect of the right to strike, he indicated that the Constitution guaranteed this right except when essential services were involved, but that such services still had not been determined: this was a task for Congress. He considered that the situation regarding the right to strike was different according to the country in question, and according to its development. The reference which he had made to the possibility of adopting an instrument of this nature did not mean that his Government wished to limit the right to strike. This right had been found to be limited, even by the Committee of Experts; for the Committee, the freedom of association which had been established did not allow strikes in essential public services, or in the public administration. The purpose of his proposal that an international instrument be adopted on the right to strike was to set out the limits for this right. In reference to the intervention of the Workers' member of Spain to the effect that his Government did not respect the right to life, he emphasised that his Government did respect the right to life, not only as required in international instruments on human rights, but also under the national Constitution, and on behalf of his Government he fervently rejected this allegation. He referred to the difficult situation in his country, an excellent place for drug traffickers, but rejected the insinuation to the effect that the murder of a number of indigenous persons was owing to inaction on the part of the Government. His Government was struggling against such circumstances, and it seemed that other governments, for example Spain and the United Kingdom, were experiencing similar circumstances in respect of terrorist activities, without one being able to suggest that they did not respect the right to life.

The Workers' member of Colombia stated that the Government had not responded to the question which had been raised in respect of the situation of the trade union movment, and reiterated his question as to what were the essential public services in Colombia, as the absence of definition in the legislation left the determination of such services to the free will of the Government.

A Workers' member of Ecuador stated that he shared the different opinions expressed in the Committee on the report of the Committee of Experts, which had recognised that Colombia had made some progress in implementing legislation. Nevertheless, he observed that in their interventions the Workers' members had stressed the discrepancy between such provisions and practice. He referred to the intervention of public servants at trade union meetings, which according to the Government representative was intended to guarantee the democracy of the decisions which trade unions were adopting. In his opinion, this involved a clear violation of the Convention. He considered that the Government had an interest in eliminating such participation in trade union meetings, and that such participation might lead to suspicion in the cases of murders of trade union leaders, in that there could be established a

cause and effect relationship between these matters. The speaker observed that presently the rights of workers guaranteed under ILO Conventions appeared to be becoming fewer. In this context, he clarified that trade union freedom which was not accompanied by the right to strike as an indispensable complement was a non-existent freedom of association.

A Workers' member of Chile stated that Chilean trade unionists had extensive experience in respect of restrictive laws on the trade union movement. After having heard Colombian trade unionists and those exercising public power in that country, he considered that he was confronted with a reality that was characteristic of Latin America. The restrictive laws which existed in Colombia existed in Chile and were characteristic of a dictatorship. He believed that Colombia was a country that wished to improve the institution of democracy, but which could not do so without the workers. Free workers not only exercised the right to strike but also constructed peace together with employers and politicians. He wished that the Government representative would say whether the authorities really had the will to respect the Convention. He hoped that in 1993 they would not speak more about murders, and that Government representatives would not need to give explanations. He also hoped that in the coming year the Government would show more respect for the rights of workers and human rights, so that workers could play an appropriate role in the development of their country.

A Workers' member of Greece stated that there must have been a misunderstanding, because no one had confused political power and judicial power. The latter, in all democratic countries, involved only the interpretation and the application of laws. The Government was requested to change national legislation in order to bring it into conformity with the Convention. In addition, he asked the Government whether it intended to request technical assistance from the ILO for this purpose.

The Workers' member of Spain referred to the intervention of the Government representative. He indicated that the essential difference between what was occurring in Spain and Colombia was that in Spain, it was known who was committing the murders and acts of terrorism. The State was taking responsibility for the elimination of such murders and had succeeded in reducing their number. He requested the Government representative to respond to two questions: when was the control which the administration exercised over the trade union movement by the presence of a public servant at trade union meeting going to disappear, and when was it going to recognise the confederations and the right to hold strikes?

The Workers' members stated that the Colombian Workers members' had provided useful information in describing the types of strikes that were banned as "essential services", such as those in the hotel and oil industries. They noted that such an interpretation of "essential services" was not a correct application of the principles of the Convention. They agreed that there was a generally accepted distinction between government and judiciary in such countries: the Government established laws while the judiciary applied them, but he emphasised that if the law was wrong, the Government could not use the judiciary and its independence as an excuse for lack of action. In their view, the law was wrong and needed to he changed. The Government referred to acts of terrorism which had taken place in Spain, the United Kingdom and the USA which infringed upon the right to life. The Workers' members stated that if hundreds of trade unionists disappeared and even worse were killed every year in those countries, there could be no doubt that these facts would be of concern to this Committee and the subject of considerable discussion. There were death squads operating in Colombia that were killing trade unionists, and this fact could not be ignored. They declared that they did not believe that it would be helpful to re-open the debate on Convention No. 87 and the right to strike. They noted that a resolution in respect of this issue had been placed on the agenda of the Resolutions Committee, and had been given low priority. In their view this was an indication that both Workers' members and many governments at this Conference felt that the more detailed examination of these issues would not be helpful and certainly the work of the present Committee might become chaotic during the course of an examination which could take many years. Governments who had been strictly following interpretations of the Committee of Experts on the right to strike would begin to doubt the correctness of their application of the Convention if the principle became the subject of lengthy examination. The Committee of Experts' stated view on the issue had been clear for decades and had not been challenged except in the last year or two by the Employers' group and now the Government of Colombia.The Workers' members suggested that the Government be asked whether it could be prepared to accept technical assistance from the ILO. Although they had seen the first signs of movement towards conformity with the Convention, they stated that they wished the conclusions of the Committee to be strong enough to establish that the Government still has a considerable way to go before they were fully in conformity with the Convention.

The Employers' members stated that, despite the many problems faced by its country, the Government had managed to take positive steps in respect of the Convention, which had caused the Committee of Experts to note this case as where progress had been made. In reference to the distinction made between law and interpretation of the law, they noted that where the law was unclear or contained loopholes, the interpretation of the law became independent as it stepped in to clarify and apply the law. This was also true of Convention No 87, in respect of which a body of case law had developed which was extremely favourable to the workers' case in the present situation, although in their view the content of this case law could not be derived from the Convention. However, as the Committee of Experts had made lengthy statements about the right to strike and restrictions on this right. they must be addressed by this Committee.

The Committee took due note of the written and oral information provided by the Government. It also took note of the progress being made in conformity with the Convention, and it felt bound to recall that there still were different points raised by the Committee of Experts where the law was in conflict as the Convention. The Committee noted, however, that the Government was settting up a tripartite commission to prepare a draft Bill which the Government intended to bring before Parliament. It also took note of the Government's willingness to ask for technical assistance from the ILO. The Committee remained concerned about the situation – not only the legal one – existing in the country. It therefore urged the Government to take all necessary steps to bring the legislation into complete conformity with the Convention at its earliest convenience in order that the Committee could make a full assessment of the same at its next session.

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International Labour Conference

Provisional Record

Seventy-ninth Session, Geneva, 1992

27

Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

CONTENTS

Honduras (ratification: 1956). The Government supplied the fol-lowing information:

The Government is aware of the need to reform its Labour Code with a view to bringing it into conformity with ratified Conventions and social developments in this field. The Government's will as concerns these changes has been expressed by the President of the Republic on different occasions; this interest has been translated into the creation of a Special Commission, in which the Gover nment's will to make these changes as well as all those which arise on tripartite level to the extent possible, with the intent to secure agreement of all the interested sectors. The Government has at the same time implemented a project entitled "Modernisation and institutional reinforcement of the labour administration in sup-port of the economic reorganisation programme", of which this Special Commission has knowledge. The objectives of this project correspond with those of the Special Commission. The Government nevertheless understands the Committee of Experts' preoccupation with the period of time – many years – which has elapsed since the Committee's first observation without the necessary amendments having been accomplished. The Government will continue to regularly inform the Committee of Experts on the progress which it has achieved.

In addition, a Government representative, the Minister of Labour and Social Welfare, referred to the enormous and serious problems faced by his country in all areas. He indicated that his Government generally encouraged dialogue and consultations in all sectors. Referring to the observations of the Committee of Experts he pointed out some contradictions that existed between certain articles of the Labour Code and the provisions of the Convention even though these contradictions might only relate to minor points. For example, it was a requirement to obtain the consent of a certain percentage of workers or, in some public enterpris-es, the approval of certain authorities before calling a strike. How-ever, the right to strike was not prohibited. The Government has decided that the adoption of a new Labour Code or the substantial reform of the existing one should be based on and the product of consultations in the country as it was useless to legislate arbitrarily or adopt idealistic standards. In doing this it was necssary to take into account the suggestions of the Committee of Experts as well as the assistance offered by the ILO. Two very productive seminars, which helped bring out the initial cooperation required from the different sectors, were conducted. A tripartite committee chaired by the Deputy Minister of Labour has been established in order to change the structures of Honduran labour legislation and to follow up the comments of the Committee of Experts and its results would be seen in the course of this year. Finally, he indicated that the Government would be sending its observations along with conclusive evidence on the complaints pending before the Committee on Freedom of Association and expressed the desire to cooperate with the ILO as requested.

The Workers' members welcomed the information provided by the Minister concerning the setting up of a tripartite Committee to advise on the changes that need to be made to the Labour Code to put it into full conformity with the Convention. They also welcomed the information about the Government's consultations with the ILO on these questions. While all these were encouraging developments, they recalled that the Committee of Experts had been making its comments on this question for many years now and no legislative measures have yet been adopted to amend the Labour Code. Referring to the strong language used by the Committee of Experts in its report, they emphasised to the Government the need for it to examine these comments, including the seven specific areas in which the Committee of Experts found the existing Labour Code to require amendments to bring it into line with the provisions of the Convention. In view of past long delays in this case, they strongly urged the Government to do its utmost to adopt legislative texts to amend the Labour Code as soon as possible as well as to ensure their full application in practice.

The Employers' members considered that the seven points figuring in the Committee of Experts' comment did not have the same weight. The ban on workers employed in small agricultural undertakings and stock-raising enterprises form joining a union, the ban on more than one union per enterprise, or the requirement that trade union leaders be engaged in the occupation or profession represented by the union for more than six months violated the very text of the Convention. The Employers' members were therefore in agreement with the comments made on these points by the Experts and considered, like them, that the Government should take the necessary measures to bring its legislation into conformity with the Convention. They also expressed the hope that the Government would amend the legislation in the near future. However, the other points criticised by the Committee of Experts could not be directly based on the Convention. When the Convention was drawn up in 1948, the question of introducing the right to strike, for example, had not been retained in the text. The comments of the Committee of Experts on national legislation in relation to essential services and other aspects of the right to strike were not therefore founded on the Convention itself. As regards the legal requirement of a two-thirds majority of a union's general assembly for calling a strike, the Employers' members noted that, in many countries, the majority required for calling a strike was governed by legislation or through trade union statutes. and that in any case when trade union statutes were silent on this point, it was for the State to determine the parameters since every strike involved some disruption. The definition of the required majority was a national question which had to be settled by the law and practice of the country. In the light of these considerations, the Employers' members did not share the Experts' opinion that the requirement of a two-thirds majority of a union's general assembly for calling a strike constituted a violation of a Convention.

The Workers' member of Honduras confirmed that a tripartite commission for the revision of the Labour Code had in fact been designated for bringing the Code into conformity with the Convention, along the lines of the comments of the Committee of Experts, but with one exception: the recommendation that more than one enterprise union be allowed to exist in the same enterprise, institution or establishment. In fact. compliance with this recommendation would open the doors in Honduras to the serious phenomenon of solidarist organisations, which some employers were trying to introduce to take over the activities belonging of trade union organisations. He indicated that. in 1991, the Confederation of Honduran Workers had signed a document with the President of the Republic in search of an immediate process for the revision of the Code so as to prevent the rise of solidarism. Subsequently, the employers' and workers' organisations had presented amendments along these lines to the competent authorities. Finally, he stressed that a final date should be fixed for completion of consultations on the various revisions of the Labour Code, and stated that if cooperation did not succeed, the Government would have to take the appropriate decisions.

The Government representative stated that the Government saw no problems with submitting the Committee of Experts' recommendations to Congress. He repeated his earlier statements on the need for cooperation which would lead to the processing of the reforms, because the contents of some of them could be subject to controversy between workers and employers.

The Committee took note of the information supplied by the Government. It welcomed the progress which was being made, in particular in relation to the reform of the Labour Code which was being prepared. However, it recalled that the Committee of Experts had been drawing the Government's attention to the legis-

lative provisions requiring revision and yet until now such revision had not occurred. Consequently, the Committee expressed the hope that the Government would very rapidly be able to have the necessary reforms adopted and that it would send the relevant texts to the ILO.

Document No. 254

ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/59-27/60 (Kuwait)

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Kuwait (ratification: 1961). A Government representative referred to the reasons why the Government had not been able to implement the Convention, and stated that the Government had started, on its return home last year, to look into the observations of the Committee of Experts. Kuwait had set up a committee in order to carry out a final study on the possibility of drawing up a draft Labour Code, in consultation with the General Federation of Kuwaiti Workers and the Chambers of Commerce and Industry, taking also into account the observations of the Committee of Experts. This committee had finished studying the draft Code which was being submitted to the legislative authorities. Labour relations had gone beyond Act No. 38 of 1964; workers had been able to enjoy their rights through bilateral negotiations and collec-tive agreements which had been authenticated by the Ministry of Labour and Social Affairs, and had become a referral point for courts. Under section 13 of the Act, workers and employers have the right to organise. Another element clarified by this Act was the role of these organisations. The law recognises the right of workers to freedom of association and the right to organise, and therefore made trade unions legitimate and legal from the point of view of the law. The speaker emphasised that Kuwait had made great strides in developing labour relations and the trade union movement, as well as the protection of workers' rights and the improvement of condi-tions of work, in accordance with provisions of the Convention. The Ministry of Labour and Social Affairs no longer had wide powers of supervision. The Ministry was confined to give assistance that trade unions might require from the Government. The Ministry also had the right to control any activity which may be contrary to national law. As to the eligibility of non-Kuwaiti workers to hold trade union office, the text of the Act does not expressly prohibit them from being elected or from holding trade union office in accordancc with Chapter 3, section 72. Concerning the system of a single trade union, in order to protect the rights of workers the Gov-ernment had enabled workers to set up more than one trade union. In relation to workers' grievances, the settlement of labour disputes and the imposition of arbitration, he indicated that Act No. 38 pro-vided that workers' complaints might be settled on a bilateral basis. The trade union is authorised to act on behalf of workers in accor-dance with this Act, but the Act is not applicable to employers' complaints against workers. The decisions of the arbitration body are final and binding. Since labour disputes are dclicate and sensi-tive issues which require rapid resolution, they are dealt with by a subsidiary body of the court of appeals, referred to in section 88 of the Act, following fair and just procedures, in accordance with the Convention.

The Workers' members stated that this case had been discussed in the Conference Committee in 1981, 1982 and 1983. The Committee of Experts in its report referred to the Government's information to the effect that the Convention had helped to strengthen freedom of association and trade union organisation, develop union activities and orient trade union freedom towards its goals in terms of defending workers' rights; it also referred to a new draft Labour Code. However, since the legislative and practical position had not changed, the Committee of Experts recalled the current divergencies, including provisions on trade union monopoly, res-trictions on union activities for foreign workers, supervisory powers of the authorities as to the functioning of union organisation and above all restrictions on the free exercise of the right to strike.The Workers' members also felt it necessary to express their view on the right to strike so as to maintain balance in the report and for the future work of the Committee, since :he Employers' members spo-kesman had continually during the examination of individual cases mentioned this to explicate the Employers' attitude. The Workers' members repeated clearly and unequivocally their support for the Committee of Experts' interpretation of the right to strike, both as regards the right to strike in general, not only as concerned the way in which it was carried out, but also possibly limited. They conside-red the Experts had correctly applied working methods and prin-ciples referred to in paragraph 6 of their general report. The right to strike in principle and as it is practised under the law was an essential means of realising trade union freedom. It was also a basic ingredient of trade union freedom. The Committee of Experts' opi-nion was not new, and it had been known for many years; the Com-mittee of Experts repeatedly confirmed it in its report. Their view was founded on case law of the tripartite Committee on Freedom of Association and there was no reason to change the established views. Contrary to the Employers' members' spokeman's ideas, universality of standards does not allow selective interpretation of freedom of association and the elements making it up – including the right to strike – according to the political system or the economic or social situation of a given country. The Workers' members reiterated their position in the discussion of problems related to the exercise of the right the stike in Kuwait. Referring to the Government representative's statements that the Government was trying to improve the situation, and that a draft Code had been prepared, the Workers' members thought it necessary for the Government to transmit without delay information for examination by the Committee of Experts on all points mentioned in its report to the Office, so that the Conference Committee could follow developments and examine the case again next year.

The Employers' members recognised the extraordinary circumstances that the Government had faced in the past few months and appreciated the rapidness with which it had come back to this issue and had proceeded to submit a draft Code to the legislature. They considered that the Government should submit a copy of the draft legislation to the ILO in order for the Committee of Experts to have a better appreciation of the degree to which the requirements of the Convention were met. As regards the right to strike, they recalled their position that the finding of a detailed regulatory scheme relating to the right to strike is not appropriate under Convention No. 87 because the words "right to strike" do not appear in the text of the Convention. The Conference Committee, in deciding not to consider the controversial issue of the right to strike, simply did not address it and made clear that the instrument deals with "freedom of association and not the right to strike." The Employers' members recalled the remarks they had made in 1991 that many of the decisions and interpretations of the Committee of Experts were drawn from decisions of the Committee on Freedom of Association, and that the latter Committee was not limited to the words found in Conventions Nos. 87 and 98 and was in a position to espouse general principles. They therefore noted their reservaion with respect to the right to strike and the Experts' findings, in particular that restrictions could not be placed in the case of strikes in the essential services in the strict sense of the term, which they considered going too far in terms of what Convention No. 87 contemplates. With the above-mentioned reservation, the Employers' members associated themselves with the comments of the Workers' members and hoped that the Government would soon be on a position to report that it is conforming with the requirements of the Convention.

A Workers' member of France stated that the case had been discussed for several years and referred to the situation of migrant workers, a large part of the workforce. Since restrictions on freedom of association concerned these workers' it might be considered in Kuwait very few people could join a union. The very nature of political power was undemocratic; far from being democratic, the regime was feudal: promised amendments had not been made, migrant workers were subject to restrictions, compulsory service at will, and placed outside legislation. The Government should make it clear whether proposals for amendments would explicitly eliminate discrimination against foreign workers. As regards the right to strike, the speaker stated that it was part of international labour standards and any government which undertakes to observe the Convention must also observe the right to strike for all categories of workers.

A Government member of Germany associated himself completely with the previous speakers as regards the current case. On the other hand, his agreement on the conclusions which the Committee will adopt in this case did not extend to all aspects of the interpretation of the Convention advanced on various sides.

A Workers' member of Italy considered that Kuwait had made insufficient efforts to observe the Convention, although during recent events it promised to democratise and freedom of association was an essential part of this. Failing observance of the Convention, democracy was a long way from being realised. The role of unions was essential for reconstruction of the country on a more just social basis. Prohibition of political activities for unions contradicted their very political participation in liberation of the country. The majority of workers' dependants were migrants and their freedom of association was restricted if such workers could not join unions of their choice. As Kuwait had huge resources, the Government could adopt legislation in conformity with the Convention.

The Government representative emphasised that great progress had been made in his country, which has a legitimate Constitution approved by the people, under a democratic, and not fuedal, Government. General elections are scheduled for October 1992 for the people to choose their representatives in Parliament which will guarantee the legitimacy of the Government. As regards migrant workers, he stated that about half a million foreign workers had come back to Kuwait. Concerning the single trade union system, he indicated that there were several trade unions representing employees not only in banks or industries but also in ministries; foreign workers are also allowed to join these trade unions. He recalled his initial statement that there was no prohibition on affi-

lation to trade unions, and also stated that there were people of 80 different nationalities in the country. Numerous strikes had been organised even in the public sector, and the Government did not intervene to stop these strikes or to arrest representatives of workers for acting in an undisciplined manner. The Government merely called on the two parties to attempt to settle the dispute. Numerous collective agreements had been signed to settle disputes that had been expressed through strikes. As to the role of supervision that the Government undertakes on trade union affairs, the Ministry of Labour and Social Affairs provides subventions to all representative associations, to trade unions and private voluntary organisations. While the Government supervises the use of this assistance, trade unions have every right to undertake any activities they wish. He declared that the Government would make every effort to submit sufficient information concerning the application of the Convention and to include the revision of the Labour Code among the priorities in the legislative authorities for reorganising the society of the country.

The Workers' members rather had the impression that legislation in general and more particularly the aspects touching directly or indirectly on the rights of migrant workers do not figure in the priorities of the Government.

The Committee noted the information supplied by the Government representative. It acknowledged the difficulties the Government had been meeting recently, but it felt bound to recall that the subject matter had been a point of concern in the reports of the Committee of Experts for many years and it was disappointed on account of the Government arguing its case referring to a Law dating from 1964, although that Law had been taken fully into account by the Committee of Experts. On the other hand, the Committee was under the impression that progress seems to be made in bringing the legislation in the diretion of full conformity with the Convention. In order that the Committee of Experts can make a full assessment of the situation, the Committee expressed its hope that the Government would send the copy of the draft Labour Code to the ILO and suggested the Government might ask the assistance of the Office in this respect.

Document No. 255

ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/62-27/63 (Panama)

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Panama (ratification: 1958). As regards certain points cited in the observation of the Committee of Experts, the Government sends the following documents:

1. Draft Law No. 70 "Providing for the Establishment and regulation of the Civil Service";
2. Resolution No. D.M. 23/92 of 21 May 1992 which reduces the number of documents required for the recognition of social organisations.

In addition, a Government representative, referring to the point in the observation of the Committee of Experts on the application of the Convention with regard to the exclusion of public servants from the scope of the Labour Code. which is found in Chapters 1 and 2 of Title XI of the Constitution of Panama, indicated that a Bill on administrative careers had been tabled in the Legislative Assembly for study and approval. The Government intended to grant civil servants a legal framework in conformity with the principles of the merit systems as well as other rights and obligations ensuing from constitutional provisions and corresponding to the provisions of the Labour Code which were applicable to the private sector. With regard to the requirement of "an excessively high number of members required to establish trade union organisations" and that of "75 per cent of members of trade unions who were required to be Panamanian" raised by the Committee of Experts in its observation, their potential amendment was likely to be considered in a tripartite debate within the framework of cooperation in the social and labour sectors initiated by the Government. This consultation and the subworking groups that had been set up within it formed an appropriate framework to improve the Labour Code in conformity with ratified international labour Conventions. This measure was also intended to improve national production and the general conditions of workers and employers as well as to improve the possibilities to create new sources of employment. The question of "the automatic removal from office of a trade union officer in the event of his dismisal" was also being discussed within the framework of the cooperation process. This removal applies only to the leaders of unions at the enterprise-level, who must be employed at the enterprise. The removal does not apply to the sectoral unions, federations, confederations or trade union centres. As regarded the authorities' wide powers of supervision over the records of accounts of trade unions, it would be appropriate to point out that Resolution No. 23/92 of 21 May 1992, which reduced the number of documents which were necessary for the recognition and functioning of social organisations, restricted and regulated in an appropriate manner section 376, subsection 4, of the Labour Code, to take account of the previous observations of the Committee of Experts.

As concerned the observations on Act No. 13 of 11 October 1990, it was important to emphasise the temporary and exceptional nature of this measure which was justified by a stabilisation policy to bring about economic recovery. This Act had not prevented the negotiation of six collective agreements in 1990 nor the adoption of nine other collective agreements through direct negotiations in 1991. Moreover, it had not prevented strikes but had simply introduced arbitration after consultation with workers to prevent the closure of the enterprise and the loss of employment in the case of prolonged strikes. Act No. 13 had to be re-examined within the framework of the labour management consultation process in order to rapidly re-establish the exercise of collective bargaining in conformity with international labour Conventions. As for the Public Order Act No. 25 of 14 December 1990, its provisions ceased to be in force on 31 December 1991. It had not been established that "an important number" of workers had been dismissed: that Act only affected public employees who had commited acts of violence towards other public employees or consumers of public services and who had damaged the installations and property of the State in non-union activities, as was the case of two public enterprises; and not because they were trade union leaders. However, the number of workers who had been dismissed only represented 2.3 per cent of the employees in each of these two enterprises. Numerous dismissed workers 107, in the Water and Electricity Institute (IRHE) and 37 in the National Telecommunications Institute (INTEL), had appealed before the competent courts which paved the way for full jurisdiction administrative proceedings which had to be settled by the appropriate chamber of the Supreme Court. Detailed information in this respect had been submitted to the Committee on Freedom of Association (Case No. 1569) and in the supplementary reports on Conventions Nos. 87 and 98 presented in January 1992.

The Workers' members stated that the Conference had examined this case in 1981, in 1988 and in 1991. The long examination that had taken place the previous year had led to a conclusion which was put in a special paragraph of its report. Other than the points that were already well known, the Committtee of Experts also noted this year that more recent laws contained restrictions on the right to strike and provided for anti-union measures against public servants. The situation in law and in practice did not seem to have changed from last year. The only new element consisted in the "agreement on cooperation in the social and labour sectors" concluded between employers, workers and the Government in December 1991, which should allow for the beginning of consultations which would lead to an eventual amendment of Act No. 13 of 1990, restricting the right to strike. The content of the texts mentioned in the written communication by the Government appeared to be obscure. However, a slight change in the Government's attitude was noticeable in that it seemed to be more positive this year than during the debates that took place in 1991. The Government – as indeed certain other governments notably in Latin America –

gave the impression of wishing to comply more with the supervisory bodies. This intention of the Government to proceed with certain changes had not resulted in any real progress in practice. It would also be appropriate to insist that the initiatives annouced result in an actual amendement of the legislation on all the points raised by the Committee of Experts for many years, notably on the elimination of state intervention in trade union internal affairs, the elimination of the requirement with regard to nationality, the guarantee of freedom of association of workers in the public sector and the respect of the right to strike. In view of the seriousness of these issues which had been emphasised in the Committee's conclusions of 1991 and having regard to the complexity of the information provided by the Government, a direct contacts mission from the ILO could be envisaged. In the absence of a change in the near future, not only in the intentions of the Government but also in reality, this Committee would be forced to note once again next year the discrepancies between stated intentions and actions.

The Employers' members indicated that their point of view differed from that of the Workers' members on a number of points. Concerning the substantive issues raised in this case, it was first of all clear that the denial of the right of public servants to bargain collectively constituted a flagrant violation of the Convention. The information on their legal situation contained in the report of the Committee of Experts and in the Declaration of the Government representative was however somewhat confusing and it would be appropriate if the Experts examined this question attentively once again. To know if the requirement of a minimum number of 50 workers or of ten employers to establish an organisation was too high, one could wonder what in fact was the right figue: the Committee of Experts found it to be too high, the Government promised to modify it but however the Convention did not say anything on this matter. One should therefore be careful in prescribing specific figures which in any case could only be arbitrary. On the other hand, concerning the requirement that 75 per cent of trade union members should be Panamanian, it was undeniable that there was a clear infringement of the Convention which guarantees right to freedom of association without any considerations of nationality. The Government stated that this issue was going to be examined and one would hope that this examination would have a positive outcome. As to the problem of the extensive supervisory powers of the authorities on trade union activities, it was important to distinguish between those powers that could lead to a real interference in the internal affairs of the union and the simple verification of accounts which according to the Government were intended to prevent or punish abuse. The Committee of Experts itself recognised that there could be an audit if a request was made by a tribunal or by the majority of union members. Union members indeed had to be protected against potential abuse and it would be appropriate if minorities could also benefit from this protection. With regard to restrictions on the right to strike, the agreement concluded in December 1991 between the social partners and the Government constituted a new and important element. Last year the Employers' members had already expressed their views on the way in which the right to strike had been interpreted by the Committee of Experts. The Experts, however, did not take into account the new agreement or the views of the Employers' members who had nevertheless explained in detail the reasons for which the principles relating to the interpretation of the Committee of Experts were not acceptable to them. The Committee of Experts which in paragraph 6 of its General Report said that it followed the "spirit of mutual respect, cooperation and responsibility" in respect of its relations with this Committee had however in the present case reiterated its previous stance without adducing additional arguments. In short the Employers' members were in complete agreement with the Committee of Experts as to the extreme gravity of this case, but were in complete disagreement as to certain elements of its analysis.

The Workers' member from Panama stated that he shared the views expressed by the Committee of Experts in its observation on the application of the Convention. The cooperation process that had taken place had led to the hope that the problems that were identified would be resolved. With regard to the questions examined by the the Committee of Experts, although Act No. 13 had been adopted in exceptional circumstances, its application had been unilateral. A large number of workers had been dismissed pursuant to Act No. 25 and the recommendations formulated in that respect by the Committee on Freedom of Association should be followed. In spite of his support for the consultation process and his optimism as to its outcome, which should overcome the problems in time for the following year's meeting of this Committee, the speaker felt that it would be appropriate to continue to examine this case. The ILO could assist in the revision of the labour legislation in force.

The Government representative indicated that some of the points examined by the Committee of Experts had been suspended for a number of years but that the situation had been aggravated by the provisions introduced in 1990 because of the exceptional events that had taken place in his country. The Government had the firm intention of finding a solution to all the problems raised by the Committee of Experts. The consultation process constituted a particularly appropriate framework to examine these questions through dialogue between the Government and employers' and workers' organisations. This dialogue did not only cover Act No. 13 but had the aim of revising the whole of the Labour Code. Reiterating his previous declarations, the Government representative communicated information related to collective agreements that had been negotiated after the entry into force of Act No. 13.

The Committee took note of the written and oral information provided by the Government from which it understood that a tripartite consultation process had been started with a view to ensuring that the legislation was brought into complete conformity with the requirements of the Convention. At the same time, the Committee had the impression that the progress made so far was still limited. In view of the fact that the political situation in the country had changed dramatically only a few years ago and that the new Government found itself confronted with problems on the subject matter, the Committee suggested to the Government to invite a direct contacts mission from the ILO in order to reach the aforementioned goal in the near future.

Document No. 256

ILC, 85th Session, 1997, Report of the Committee on the Application of Standards, pp. 19/74-19/78 (Bangladesh)

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Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Bangladesh (ratification: 1972). A Government representative, referring to the observations made by the Committee of Experts, noted that freedom of association in Bangladesh was covered by the Constitution and trade union legislation, the Industrial Relations Ordinance (IRO), 1969. The trade union law covered only the organized sector, where between five and six million workers were employed. Other economic sectors were covered by the Constitutional provisions relating to freedom of association. Violations of this right could be submitted to the Supreme Court of Bangladesh, which was the highest judicial body in the country.

With reference to the right of association of persons carrying out managerial and administrative functions, he noted that the IRO allowed workers and employers to form trade unions without requesting prior authorization. Union membership was open to persons in factories, business, industries, shops and public sector corporations. Public servants in the Department of Telephone and Telegram and in the Department of Railways were also covered by the law. However, public servants in other government offices were not covered by the IRO. Moreover, persons in industrial and commercial establishments performing managerial and administrative functions could not join workers' trade unions. Such persons — who comprised approximately two per cent of the workforce — could form associations for the advancement of their rights and interests in accordance with Article 38 of the Constitution of Bangladesh, which gave every citizen the right to form an association or union subject to reasonable restrictions imposed by law in the interests of morality or public order. Persons carrying out managerial and administrative functions in the private sector therefore enjoyed the right of association.

On the question of the right of association of public servants, the speaker reiterated the view that the legislation of Bangladesh was in conformity with the requirements of the Convention. As stated in the Conference Committee in 1995, even though public servants were not covered by the IRO, they did have the right to form associations in order to advance their interests. Such associations held meetings, discussed the problems faced by their members and formulated demands for submission to the Government for negotiation. With regard to the exclusion of workers at the Security Printing Press and of public servants from the right to form trade unions, he maintained that the Constitution guaranteed their right to form associations to advance their causes.

The speaker noted that the observations of the Committee of Experts concerning restrictions on the range of persons who could hold office in trade unions had been answered by his Government in the Conference Committee in 1995. He reiterated that, except for workers dismissed for misconduct or convicted of the embezzlement of union funds, moral turpitude or unfair labour practice, every worker had the right to enjoy trade unions of their choice and to hold elected trade union office regardless of their age, sex or creed. Moreover, a worker dismissed for misconduct could seek redress against the management in a court of law. The admission of dismissed workers as either members or officers of trade unions might hinder normal trade union activities, as well as industrial peace and productivity, which might in turn frustrate the underlying purpose of trade unions and collective bargaining. In Bangladesh, dismissed workers were not elected to trade union office. However, section 7-A(1)(b) of the IRO promoted rather than restricted their right to choose their representatives.

In response to the observations of the Committee of Experts concerning external supervision, he stated that the IRO conferred certain quasi-judicial functions on the Registrar of Trade Unions. However, any act of the Registrar could be challenged in a court of law and the Registrar was not permitted by law to revoke the registration of a union without prior permission from the labour court. He did not agree with the observation made by the Committee of Experts that the procedure of supervision by the Registrar of trade union financial affairs should be subject to review by the competent judicial authority affording guarantees of impartiality and objectivity, since any act of the Registrar could already be challenged in a court of law. Moreover, the constitution of a union at the time of its union's registration was always respected.

The Government representative added that the requirement that the membership of a trade union should consist of 30 per cent of the total number of workers concerned before it could be registered was necessary in view of the country's level of social, economic and political development. This measure helped to check the multiplicity of trade unions, which would affect adversely the inter-

ests of the workers. Under the existing provisions, up to three unions could be registered for each establishment. Moreover, the IRO included provisions governing the determination of collective bargaining agents. He did not consider that the 30 per cent requirement restricted the right of workers to organize. However, measures adapted to the situation might be taken in the near future. In this connection, he pointed out that Convention No. 87 did not address specifically the danger of a multiplicity of trade unions, but was concerned that workers should be free to establish organizations of their own choosing. If they formed too many organizations, they would weaken their position.

On the question of the right to organize of workers in export processing zones (EPZs), he stated that these workers were not deprived of their fundamental right of freedom of association as guaranteed under Article 38 of the Constitution. In the same way as other developing and less developing countries which were establishing EPZs for the purposes of economic development, Bangladesh had suspended the right to form trade unions in EPZs as a purely temporary measure under the Industrial Relations Ordinance 1969. Indeed, workers in EPZs enjoyed better employment and working conditions, higher wages and very congenial labour management relations. The fact that no complaint had yet been received by the Government from any workers' association alleging that workers in EPZs had been deprived of their rights meant that they had accepted the reality of the situation. Any Convention was ratified with some flexibility to suit national conditions and EPZs were being developed in many other Asian countries. Economic development required the establishment of EPZs, but not at the cost of the social and economic welfare of workers. The Government was very much aware of its responsibility towards its citizens.

He added that the Government of Bangladesh had noted the observations of the Committee of Experts concerning restrictions on the right to strike. Although appreciating the observation of the Committee that it was mindful of the difficulties which might arise during an acute national crisis, he recalled that sections 28, 32(2), 32(4), 33(1), 57, 58 and 59 of the IRO had been examined by the National Labour Law Commission (NLLC), whose report was still under study by the Government. He added that the Government of Bangladesh would welcome the technical assistance of the ILO in any field related to the implementation of Convention No. 87.

The Workers' members deplored the fact that, despite the Government's statement in 1995, at the conclusion of which it had undertaken to provide the Committee of Experts with detailed information, little seemed to have been achieved on this subject. The seven questions raised by the Committee of Experts were not new and required the adoption of urgent measures by the Government to bring the situation into greater conformity with the principles of freedom of association. These matters had already been the subject of exhaustive discussion in 1995, in the same way that related problems concerning the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), had been addressed in 1994. In general, the Workers' members regretted that for many years the Committee of Experts had needed to make observations on important matters related to the fundamental principles of freedom of association. In 1994 and 1995, the Government of Bangladesh had referred to the discussions held in its tripartite national commission. It appeared that this body had submitted recommendations on several points, a number of which were contained in a Bill to amend the legislation, which had not yet been adopted. Most of the criticisms of the Committee of Experts in the case of Bangladesh concerned matters that needed to be respected by every country, irrespective of its level of social and economic development. These matters were also related to the campaign of the Director-General to promote the ratification and application of fundamental Conventions. The Workers' members were aware of the economic and social difficulties confronting Bangladesh.

Better collaboration between the public authorities and civil society, including the organizations of workers and employers, would contribute to combating poverty and social exclusion and could promote social justice and peace. Indeed, many of the problems relating to the application of the Convention had their roots in the tension between the public authorities and civil society in Bangladesh. With regard to the specific comments made by the Committee of Experts, the Workers' members regretted that the Government's report contained little relevant information on the right to organize of persons carrying out managerial or administrative functions, or of public servants. The Government referred laconically to the existence of two associations for public servants in the public sector and referred to other associations without mentioning them by name. Furthermore, the report did not contain information on the provisions guaranteeing the right to organize of managerial staff in the private sector. The Workers' members emphasized that this category of worker should be guaranteed the right to establish and join organizations of their own choosing, including the trade unions that covered other categories of workers. The concept of managerial functions needed to be defined precisely so as not to weaken the trade unions of other workers.

With regard to interference by the public authorities in the establishment and functioning of trade unions, they noted that the problems raised were of a serious nature and related to restrictions on the categories of persons who could hold trade union office, interference by the public authorities in the internal affairs of trade unions and excessive limitations on the establishment and operation of trade unions at the enterprise level.

With regard to external control, they regretted that the information provided to the Committee of Experts was insufficient to establish whether such control was limited to supervising the rules of trade unions and the application of the law, or whether such matters were subject to really impartial judicial control.

On the subject of the requirement for the membership of a trade union to include 30 per cent of the workers in an enterprise [illegible] could be registered, they warned that this threshold raised serious problems in systems for the recognition of trade union organizations which were based in part or in whole on enterprise unions, with the risk that workers in small- and medium-sized enterprises would be excluded. They therefore emphasized the need to establish without delay procedures and provisions which promoted freedom of association, as set out in the Preamble to the ILO Constitution and in the Convention.

On the question of EPZs, they noted that the Government referred to the recommendations of the National Labour Law Commission (NLLC) and to a Bill and the fact that, anticipating certain amendments to the legislation, some workers appeared to be authorized to establish trade unions. Workers in EPZs and their organizations needed guarantees set out in specific legal provisions for the effective exercise of freedom of association. The protection of the rights of these workers was a major concern of national and international trade union movements and of the ILO, which had established a specific programme on this subject.

Furthermore, with regard to the right to strike, the procedures and provisions governing the exercise of the right to strike were such that, in practice, the very principle of the right to strike was jeopardized. They recalled the conclusions of the Conference Committee in 1995, which urged the Government to ensure that the procedures and provisions concerning strikes did not amount to a denial of this fundamental right, and they deplored the fact that the Government's response was confined to stating that it had noted the observations of the Committee of Experts. The powers of the Government to prohibit the right to strike, if it considered it contrary to the national interest, constituted a violation of the principles of freedom of association and were inadmissible in a democratic society. The national legislation reflected the gap between civil society and the public authorities. However, better collaboration between them could promote social peace and the emergence of a more stable industrial relations system.

In conclusion, the Workers' members called for the amendment as soon as possible of the Labour Code and other relevant laws to take into account all of the observations of the Committee of Experts and the recommendations of the national social partners. They urged the Government to provide detailed information to the Committee of Experts on all developments, and particularly on the work of the NLLC and any progress achieved in law and in practice. Finally, the Government should make as much use as possible of ILO technical assistance.

The Employers' members recalled that the application of Convention No. 87 by Bangladesh had been examined on three occasions during the 1990s by the Committee of Experts, and had been discussed by the Conference Committee in 1995. There were a number of important issues involved, which required individual examination.

With regard to the right of association of persons carrying out managerial and administrative functions in the public and private sectors, the important point was the manner in which these categories of persons were delimited. No specific information had been provided on this point by the Government representative. However, the Government's response to the comments of the Committee of Experts had made reference to two associations and the Committee of Experts in its comments had requested the Government to provide specific information on the number and size of any other such associations. The issue which arose in both the private and the public sector was that the persons in question might in practice be the representatives of employers. They could not therefore be members of unions at the same time, as they would then have to negotiate with themselves. The Government representative had stated that the category of persons concerned covered two per cent of all the workers involved, which appeared to be a reasonable number. Although those who were really managerial personnel could be excluded from the right to establish and join workers' unions, any who did not come into this category should be treated as

normal workers. The Government should therefore be requested to provide further information on this point in an additional report.

With regard to the right of public servants to organize, the Employers' members noted that the draft Labour Code would appear to continue to deny this right to public servants and to restrict their right to issue publications. The Government representative had not provided very much information in this respect on whether it intended to change the proposed provisions.

On the subject of restrictions on the range of persons who could hold trade union office, the Employers' members noted that, among others, workers who were dismissed for misconduct could not hold such office. The Government representative had stated that this measure was designed to protect the activities of the trade unions. However, the Committee of Experts had pointed out that such legislation entailed a risk of interference by employers. The Committee of Experts had rightly requested the amendment of the relevant provisions to provide for greater flexibility in relation to the membership of trade unions and the holding of trade union office. What was required was a legal examination of the cases which had occurred in this respect, but the Committee of Experts had not requested more complete information on this point.

On the question of external supervision of the activities of trade unions, the Employers' members noted that the Registrar of Trade Unions enjoyed excessively broad powers, which included the right to examine many kinds of documents at any time, and not just on a periodical basis. In such cases there should be proper independent procedures to prevent any undue interference in the activities of trade unions. The Government representative had stated that such machinery existed. The Government should therefore be requested to provide additional information on the applicable provisions which determined and restricted the powers of the Registrar and provided for independent supervision of his activities.

With regard to the 30 per cent requirement, under which no trade union could be registered unless it had a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments concerned, the Employers' members noted that the status of trade unions could be withdrawn when membership fell below that level. This was an exaggerated restriction by the State which placed too great a restriction on freedom of association and prevented the creation of new trade union organizations. It was important to remember that most workers' organizations had started out with few members. Although the Convention did not contain specific provisions in this respect and it was for the State to set the necessary conditions, these conditions should not constitute obstacles to the development of new trade unions.

Turning to the question of export processing zones (EPZs), which existed in many countries, the Committee of Experts had reported that the NLLC had submitted a report on this subject which was being studied by the Government. This report, and a Bill on that matter, would be submitted to Parliament. Although the Government representative had not provided further details on the NLLC's report, he had claimed that workers in EPZs enjoyed better conditions of work than the rest of the country's workforce and were not unhappy with their situation. Although the Convention did not state that the same labour law had to apply throughout a country, or particularly in EPZs, it did require the observance of the principles of freedom of association on a nationwide basis.

Turning to the comments of the Committee of Experts on restrictions on the right to strike in Bangladesh, the Employers' members referred to their own position on this question and noted that there was no basis in the Convention for measuring the extent of any restrictions that were imposed on this right. The provisions of the Convention would be infringed where the right to strike was constrained to such an extent that it no longer existed. The Employers' members recalled that strikes could have serious repercussions on the national economy, particularly in view of the growing interdependence of the productive and service sectors. It was therefore relatively frequent for governments to establish a certain threshold for the proportion of the workers who needed to give prior approval to the calling of a strike in order to prevent disruption of the productive process. In this case, the level was set at three quarters of the workers concerned, which seemed reasonable. The Committee of Experts had also referred to the possibility of prohibiting a strike if it were considered prejudicial to the national interest or where it involved a public utility service. The Employers' members recognized that these expressions were not clear. However, the comments of the Committee of Experts were based on its narrow interpretation of the essential services. The Government should be requested to provide further information on the application of the relevant legal provisions in practice and the cases, and circumstances, in which these provisions had been invoked. However, this had not been done in the report of the Committee of Experts. The Employers' members recalled in this respect that it was the fundamental right of every State to determine the extent to which certain limits should be applied to the right to strike for the public good.

In view of the complexity and large number of issues involved, it was not possible to arrive at conclusions, in this case, easily. Further information should therefore be requested in the form of a written report that covered all of the questions raised in detail. The Government should also specify the areas in which change was seriously being contemplated so that these points could be taken up in future and the changes adopted could be evaluated.

The Workers' member of Burkina Faso recalled that, for many years, the Conference Committee and the Committee of Experts had asked Bangladesh to modify its legislation and practice to conform fully to the principles of freedom of association. She regretted that, despite these appeals, numerous and grave violations of these principles had again been committed, including acts of violence against the members and leaders of trade unions. By way of example, she stated that the Independent Union of Textile Workers of Bangladesh and its members, the large majority of which were women, had been the target of acts of aggression on the part of the public authorities. In August 1995, the leaders of this union had filed a complaint with the investigating official, but it had not been received. Following the institution of judicial action in conjunction with the Association of Exporters of Bangladesh, the Dhaka headquarters of this union had been ransacked in November 1995 and the members had been subjected to violence. Furthermore, the members and leaders of a union of a textiles enterprise in Dhaka had been the target of threats and harassments by the public authorities throughout 1995 and 1996. In the month of June 1996, the competent authority had refused, for the second time, to officially register this union. The speaker noted with concern that, generally, when workers registered complaints with the competent public authorities, they were not listened to and did not get any cooperation in finding an acceptable solution for the problems they faced. She regretted that the Government's report did not provide any information on the measures taken in this regard since the last report examined by the Committee in 1995. Finally, concerning export processing zones, she stressed the importance of these workers, the great majority of which were women working in miserable conditions, benefitting from the right to organize without restrictions or discrimination of any kind. She highly doubted that the absence of complaints by these workers effectively signified that they did not have any complaints, as the Government had indicated. Finally, she earnestly requested the Government of Bangladesh to modify without delay its law and practice in order to bring them into full conformity with the principles of freedom of association, and in particular with the provisions of the Convention.

The Workers' member of the United States emphasized the serious nature of the case, which concerned many of the most fundamental provisions of the Convention, including the right of association of public servants, the denial of the right to organize in EPZs, restrictions on persons who could hold trade union office, interference by public authorities in the affairs of trade unions and excessive restrictions on the right to strike. He therefore regretted that the Government representative had said very little that was new since the Committee had last reviewed the case in 1995. With reference to the statement by the Workers' member of Burkina Faso concerning the continued violation of the Convention with regard to workers in the garment industry, he recalled that there were over 800,000 workers in the industry, approximately 80 per cent of whom were women. Many garment factories were located in EPZs, where trade unions were illegal. The Government representative had made no apologies for this fact and indeed appeared to be informing the Committee that the practice would continue. This matter would need to be followed very closely.

The speaker added that during the past few years there had been a courageous effort to organize independent unions in garment factories and to bring those workplace unions into a single industrial federation, the Bangladesh Independent Garment Union (BIGU), which was independent of any political party, employers and the Government. This attempt to organize an independent, democratic industrial federation from the ground up would, if successful, be of truly historic significance for Bangladeshi workers. However, up to now the Government had refused to legally recognize BIGU, in clear violation of the Convention. He noted that this effort to organize the workers had coincided with the negotiation of an agreement with the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) for the elimination of child labour in the garment industry. The ILO had played a role in bringing about the agreement and in its implementation. BIGU was an ardent supporter of the agreement and had established the first schools for the children rescued from the garment factories. However, there were many forces in Bangladesh endeavouring to ensure that BIGU's organizing effort would fail. Some of the many personal sacrifices made by the workers in this respect were recorded in the ICFTU *1997 Annual Survey of Violations of Trade Union Rights*. In particu-

lar, he pointed out that the garment industry was a major exporter producing largely for well-known multinational companies based in the United States and other countries. This case brought to light the responsibilities, not only of the Bangladeshi Government and factory operators, but also of multinational enterprises to ensure that the fundamental human rights contained in ILO Conventions were respected. Any denial of this responsibility would only strengthen the growing forces that were opposed to the expansion of international trade, economic integration and globalization. Full implementation of the Convention by the Government, with the active support and assistance of multinational enterprises, would play an important role in resisting such protectionist forces and ensuring that these processes benefitted as many people as possible in Bangladesh and elsewhere, and not just the most privileged. Unfortunately, much still needed to be done in this respect, as shown by this case.

The Workers' member of India agreed that the case raised matters of serious concern. As a neighbour of Bangladesh, he received constant reports that trade union rights were not respected in that country. Although the Government representative had stated that trade unions could go to court to protect their rights, this was not always possible in practice. He referred to a case of the dismissal of workers in 1996, in which the workers concerned had endeavoured to take action through the courts. However, the trade union representatives who had assisted them had been told to leave their jobs, been beaten up and offered different jobs on condition that they did not go to court. It was therefore not true to say that workers and their representatives could obtain protection for their rights through the courts in Bangladesh.

Recalling the statement of the Government representative concerning the right of association of public servants, he warned that this statement raised the issue of the difference between trade unions and associations. The latter did not have the same rights as trade unions and it could not therefore be claimed that public servants in Bangladesh enjoyed the right to freedom of association. On the issue of the 30 per cent minimum requirement for membership of a trade union before it could be registered, he pointed out that this level was set much lower in most other countries. Although the Government representative claimed that the reason for the measure was to prevent a multiplicity of unions, its real objective was to raise obstacles to the establishment of trade unions in general. Moreover, the situation in EPZs in Bangladesh was also very serious. The message disseminated to multinational enterprises by the national authority responsible for promoting these zones emphasized the fact that the law prohibited the formation of trade unions. This was proof enough that the Government did not respect the right to freedom of association or collective bargaining in EPZs. Another anti-trade union measure that was not accepted by the trade unions of other countries was the broad powers of the Registrar to interfere with their activities through inspections of trade union offices, documents and staff.

On the question of the range of persons who could hold office in trade unions, he noted that workers could be dismissed for unfair labour practices, without such practices being specified in detail in the legislation. This gave the Government broad powers, for example, to dismiss trade union leaders when it so wished. Other serious constraints on freedom of association were the requirement that 75 per cent of the workers concerned needed to give their consent to a strike and the possibility of prohibiting strikes either which lasted more than 30 days or which were considered prejudicial to the national interest. These measures constituted serious constraints on trade union rights and gave the Government wide powers to prohibit strikes. For example, it had been possible for the Government to prevent a strike by telephone workers by claiming that they worked in an essential service.

Although the Prime Minister of the country had come out in favour of the adoption of changes in these matters, no concrete action had yet been taken. It was necessary to amend the legal provisions and for measures to be taken with the support of workers' organizations. A request should therefore be made to the Government to take the necessary measures to achieve progress in the application of all aspects of the Convention before the Conference Committee met again next year.

The Workers' member of Greece considered that this was an example among others where a ratification of a Convention was of doubtful value as it was forgotten in practice. The content of the Committee of Experts' observation highlighted a strange concern for workers, who were mature adults who should be allowed freely to organize themselves. The explanation according to which workers could be fired for misconduct should be further clarified, as it would be a cause for concern if the right to determine what constituted misconduct rested in the hands of employers or of a governmental institution and not in the hands of the judiciary. In any event, the workers were not so stupid as to elect dishonest leaders. This provision should therefore be repealed. As regards the requirement of a three-quarters consenting majority to declare a strike, it constituted a blatant example of interference. The economic situation was often invoked as a reason for not applying standards, while experience showed that no country could prosper without respecting them. If the Government really was intent on applying the Convention, it should undertake to do so and this Committee would then, next year, be able to take note of any progress made. The dialogue in this Committee should not only be diplomatic in nature, but should give a voice to the workers not present here and who were unable to make themselves heard in their own country.

The Workers' member of Italy was of the opinion that, in spite of the sparse responses provided by the Government, the seven points raised by the Committee of Experts bore witness to a general and persistent violation of freedom of association. The provisions affected the right of the unions freely to choose their leaders and allowed for unjustified forms of intervention by the authorities on trade union premises. A complaint concerning violations of freedom of association submitted by a union of textile workers had resulted in severe conclusions by the Committee on Freedom of Association in this respect. The 30 per cent requirement amounted, in practice, to a bar to recruitment of new trade union members. Furthermore, the Industrial Relations Ordinance, 1969, permitted the firing of trade union leaders. As regards the denial of the right to organize in export processing zones, it should be recalled that, in 1992, the Government undertook to cease this practice. As for the restrictions on the right to strike in essential services, they should be determined through tripartite negotiations and not in an authoritarian way. The elections held last year bore witness to the will of this country to progress towards democracy. No such progress was possible, however, in the absence of respect for fundamental rights. The first stages of the joint programme between textile workers, UNICEF and the ILO to abolish child labour were encouraging; perhaps a similar type of programme could be of assistance to overcoming the obstacles to freedom of association.

The Workers' member of Colombia expressed his concern regarding the lack of information provided by the Government representative, especially since hopes had been raised that the principles of freedom of association would be fully respected. Concerns had been raised regarding the interference of the Government in the internal affairs of trade unions, particularly in the case of workers dismissed on grounds of misconduct who were then prevented from holding office in trade unions. In certain countries being a trade union member in itself can lead to unjust dismissal. Freedom of association and the right to strike had to be guaranteed in export processing zones, as well as in the public sector. These rights had to be respected throughout the world, and especially in developing countries. Despite the observations formulated by the Committee of Experts, there had been little progress and repression continued. He could only hope that next year would bring about genuine progress concerning the respect of workers' rights.

The Workers' member of Pakistan, pointing out that a new Government which had come into power last year had committed itself to respecting freedom of association, called upon the Government representatives to adhere to Convention No. 87. It was not only the ratification of a Convention but its implementation in letter and spirit that mattered. First of all, trade union rights in export processing zones as well as in rural areas needed to be respected. Secondly, the restrictions on trade unions to elect their office-bearers needed to be abolished, since freedom of association dictated that trade unions elect their representatives in full freedom without interference from the Government. As a result, section 7-A(1)(b) of the Industrial Relations Ordinance, 1969 (IRO), needed to be repealed. Finally, the requirement under the IRO that no trade union may be registered unless it had a minimum membership of 30 per cent of the workforce meant that it would be difficult to organize workers in a large establishment, and therefore needed to be removed. He hoped that the Government would take up the offer of technical assistance of the Office.

The Employers' member of India indicated that labour laws in Bangladesh and India were similar. Thus, while the Trade Union Act in India merely required a membership of seven workers to form a union, persons carrying out managerial and supervisory functions preferred to form associations, and be registered under the Societies Act, in view of the nature of their functions. Therefore, in Bangladesh, the restrictions placed on them under the IRO were justified. Similarly, the restrictions on the range of persons who could hold trade union office were justified so that the internal trade union leadership could grow. The 30 per cent requirement under the IRO had to be maintained so as to avoid the proliferation of trade unions which were neither in the interest of the industry, nor the workers. Finally, the right to strike was not an absolute right and should be subject to the interests of the State. The type of over-protective pro-worker regulation promoted in discussions here was eroding employers' rights to manage their enterprises; he hoped

that this Committee would have a balanced view and keep in mind the entire industrial relations scenario.

The Employers' members recalled that the seven points which were taken up by the Committee of Experts did not all have the same importance and that new information was required and that the necessary changes should be carried out.

The Committee noted the statement of the Government representative and the debate which had ensued. It observed that, for many years, important and numerous discrepancies, in particular in the export processing zones, existed between, on the one hand, the national legislation and practice and, on the other hand, the provisions of the Convention. The Committee expressed the hope that the National Labour Legislation Commission would rapidly conclude its work on revising the labour legislation and that the new Labour Code would take into account the numerous and repeated observations of the Committee of Experts and also those of the Conferenee Committee. It reminded the Government of the possibility of requesting technical assistance from the Office in this regard.

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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Costa Rica (ratification: 1960). The Government representative, the Minister of Labour and Social Security, emphasized that his country fully applied the rule of law and allowed the law courts to decide on any discrepancies which might emerge in its society. The right to strike in Costa Rica had been set out in 1949 in article 61 of the Political Constitution. The provisions of this article showed clearly that the legislator envisaged that the right to strike would be set out in law, in this case in the Labour Code, and that it would have two limitations: in the first place, as to the sectors in which it could be exercised, with the indication that it was prohibited in the public services, the definition of which would be determined by law; and, in the second place, as regards the manner in which it was exercised, with the prohibition of any acts of coercion or violence. Section 364 of the Labour Code provided that a strike was the temporary stoppage of work in an enterprise, establishment or business, agreed upon and executed peacefully by a group of three or more workers, with the exclusive purpose of improving or defending their mutual economic and social interests. This provision was supplemented by section 366 of the Labour Code (first part), which set out the requirements to be met in order to call a legal strike. These included strict compliance with section 364, exhaustion of the conciliation procedure set out in Chapter III, Title VII, Sections 500 and following, of the Labour Code, and the requirement of being at least 60 per cent of the workers in the enterprise, workplace or business concerned. It could therefore be concluded that any strike which did not meet the requirements of section 366 (first part) was illegal. The strike by workers in Linéas Aéras Costaricenses SA (LACSA), which was referred to in the report of the Committee of Experts, did not fulfil the above requirements and was therefore illegal. This was not because it had taken place in a public service, but because when calling the strike the workers had not fulfilled the requirements established by law.

With regard to the right to strike in the public sector in general, article 61 of the Constitution excluded workers employed in the public service from its protection and left the determination of public services to the discretion of the legislator. The constitutional provision was reflected in section 368 (first part) of the Labour Code, which stated that strikes were not permitted in the public services. In this respect, it was important to note that section 368(2), which provided that disputes occurring in these services between employers and workers, and in any other cases in which strikes are prohibited, shall be submitted for settlement by the labour courts, had been found unconstitutional by the Constitutional Council on 23 August 1992. Sections 467 to 535 of the Labour Code had also been declared unconstitutional with regard to public servants and to public administrations not subject to a private employment regime, as well as sections 398 to 404 and section 535, without prejudice to the rights acquired in good faith through the labour courts for the specified duration of such rights. The ruling by the Constitutional Court stated that there were two different types of employment relations in the public service. One of these was the relationship of employees in the public sector who were bound to public administrations by a "public employment regime", under the terms of the state regime set out in articles 190 and 191 of the Political Constitution. The other type of employment relationship was not legally subject to a public employment regime, principally in state enterprises in which the State owned all or most of the shares, with the result that the employees concerned were not governed by the concept of a public employment relationship, but rather a private employment relationship. In one of the grounds for its judgment, the Constitutional Court made reference to these administrations by asserting that the declaration contained in this decision covered the employment relationship between the public administration (or administrations) and its employees but as concerned sectors in which there existed a national regulation referring to the private sector, the solution should be different. These cases would be submitted to arbitration procedures if they were based on laws, regulations or governmental decisions in force. In addition, they could not be the object of arbitration decisions taken in good faith nor decisions made by tribunals composed of persons who were not sworn officials. He recalled in this respect that, by conviction and legal obligation, the Government respected the rulings of the courts and the Constitutional Council, which were universally binding.

The definition of the public service according to Costa Rican law was contained in section 369 of the Labour Code, which stated that, for the purposes of the above section, public service means: (a) all services provided by state workers or institutions, where their activities are not also provided by individual profit-making enterprises; (b) services provided by workers engaged in sowing, cultivating and harvesting agricultural products, raising stock and producing forestry products, as well as their processing when such products would deteriorate if such processing were not carried out immediately. Nevertheless, the above services excluded the services provided by agricultural workers in enterprises which have concluded contracts with the State, which have been converted into laws of the Republic, in which it has been specified that the enterprises and their workers may submit disputes to arbitration for settlement only when they have voluntarily agreed to do so; (c) the services provided by employees of railway, sea and air transport enterprises, and the services provided by transport employees in any specific transport enterprise until its closure; (d) services provided by employees which were absolutely indispensable to maintain the operation of specific enterprises which could not interrupt their services without causing serious and immediate harm to health or the public economy, such as clinics and hospitals, hygiene services and lighting; and (e) services declared to be such by the Executive Authority throughout the territory of the Republic or in part of its territory, where the Legislative Assembly has availed itself of its constitutional powers to suspend certain individual guarantees.

The Government representative informed the Committee that, since the adoption of the Labour Code, various attempts had been made to make changes relating to the concept of public service. One of the measures adopted was contained in the Public Employment Bill No. 11,888 which was currently before the Legislative Assembly. The above Bill, in Title VI (single chapter, sections 110

to 119), contained regulations governing strikes in public services which recognized the right to strike in non-essential services and placed limits upon it, as well as establishing sanctions for non-compliance, and general prohibitions and the manner in which it could be exercised. With regard to the right to strike in transport enterprises, with reference to the Committee of Experts' comment on the dispute in the LACSA company, he indicated that section 113(f) of the Bill stated that: (general conditions of legality) in order for a strike in the public administration to be legal, employees and their organizations must meet the following requirements: (...)(f) in the case of vessels, aircraft, trains, buses and other public means of transport, such vehicles must be taken to their point of departure before the commencement of the strike.

The above information showed the openness of the legal system to permitting workers in transport enterprises, such as LACSA, to take part in strikes, provided that they complied with certain conditions in order to be classified as "legal strikes". In this way, the Government of Costa Rica was demonstrating its will to comply with the recommendations of the Committee of Experts concerning strikes in the sectors in question. There could be no doubt that through the new legislation, which was awaiting adoption by the Legislative Assembly, the Government of Costa Rica guaranteed minimum services and recognized the right to strike in non-essential services in public institutions, thereby endeavouring to find a new balance between the rights of society and the users of public services, on the one hand, and of public employees, on the other.

The rights which were formally set out in Costa Rican legislation and in the proposed legislation formulated by the Government, which was now before Parliament, were also becoming broader in practice. A little more than one year ago, teachers in the country, whose trade union organization was the strongest and best organized, had held a general strike to show their disagreement with the reforms to their special pension scheme introduced by the Government. The strike had lasted six weeks and finished when an ending to the strike was negotiated with the Magistrate. Despite being an illegal strike because it had taken place in a public service and did not meet the requirements set out by law, none of the strikers had been subject to dismissal or reprisals. A few days previously, a strike by telecommunications workers had been ended by decision of the workers themselves, but not due to government pressure. Even though the strike had been illegal, no sanctions had been taken against the strikers. The same had occurred in a strike called a few months previously in a hospital where the workers were calling for an increase in their food subsidy. The strike had been ended by decision of the workers and no sanctions had been taken against those who were involved in this illegal action. The Government representative emphasized that these cases demonstrated once again that, irrespective of whether or not strikes were legal, and unless they involved the violent expression of a point of view, they were respected even where they were in contravention of the law of the country. Strikes were neither prevented nor terminated by force. Nor were reprisals taken against the strikers.

With regard to the recommendation by the Committee of Experts that foreigners should be able to hold trade union office, at least after a reasonable period of residence in the country, the Government representative explained that the prohibition was a result of a principle set forth in the Political Constitution. Article 60(2) provided that foreigners were prohibited from holding office or exercising authority in trade unions. The legal basis of the above provision had its roots in the question of national sovereignty. In accordance with the country's constitutional provisions, sovereignty was vested exclusively in the nation. The Constitution reserved to nationals of the country the exercise of political rights on the basis that these were intrinsically derived from the exercise of the people's sovereignty. Indeed, since sovereignty was vested in the people, in accordance with articles 2, 3 and 4 of the Political Constitution, it was evident that the various ways in which the will of the people could be expressed, including the holding of office and the exercise of authority in trade unions, was confined to those who were members of the people. Nevertheless, the Government of Costa Rica was always ready to bring its legal provisions into conformity with the principles of the ILO and had decided to request technical assistance from the ILO in order to find a legal solution that was in accordance with the recommendation of the Committee of Experts.

On the question of strikes in the agricultural, stock-raising and forestry sectors, he noted that the concept of agricultural activity as a public service was not set out in jurisprudence or in very many legal texts. It was therefore interesting to examine the basis upon which the legislator had developed this concept. The explanation was to be found in the statement transmitted to Congress by the President of the Republic when submitting the draft Labour Code. He had stated that he was aware that the ILO had adopted a Convention in Geneva on 12 November 1921 obliging its signatories to guarantee to all persons working in agriculture the same rights of association as urban workers and to repeal any legislative or other measures which restricted those rights as they related to agricultural workers. However, he had emphasized his intimate conviction that agriculture and its related activities, in a country such as theirs, which depended exclusively on the produce of its fields, constituted a real public service which, for reasons of common interest, could not and should not be paralysed by a strike or work stoppage. Nevertheless, it was probable that the underlying reasons for the provision in question were more of a political nature Indeed, the prohibition upon strikes by agricultural workers was not an isolated provision, but formed part of a legislative policy that resulted in the Labour Code containing a whole series of provisions containing exceptions for rural workers. Despite the fact that they were dispersed throughout the Labour Code, they amounted to specific legal treatment that was less favourable for these workers. A number of these provisions had been repealed or amended, but there was no doubt that the intention was for the Labour Code not to apply in real terms to the agricultural sector.

It could therefore be deduced that the provisions in question covered two types of situations and one exception. The first was the most general and included all the work of sowing, cultivating and harvesting agricultural products, raising stock and producing forestry goods. The second case consisted of the processing of such products, and only covered cases in which they needed to be processed immediately in order to prevent them from perishing. The exception concerned agricultural workers in enterprises that had concluded so-called "legislative contracts" with the State in which they agreed to have recourse to voluntary arbitration. Subsequently, in view of the fact that in the cases under examination strikes were not permitted and arbitration was compulsory, and in view of the consideration that a legislative contract could not be modified by a law, the legislator had to enshrine this provision in the law for the sake of coherence. The Government was aware of the less favourable treatment accorded to freedom of association for agricultural workers, particularly with regard to the right to strike, since the adoption of the Labour Code and on various occasions had endeavoured to introduce reforms relating to the concept of public service. One of the measures adopted was contained in the Public Employment Bill No. 11,888 which was currently before the Legislative Assembly. The above Bill, in Title VI (single chapter, sections 110 to 119), contained regulations governing strikes in public services which recognized the right to strike in non-essential services and placed limits upon it, as well as establishing sanctions for non-compliance and general prohibitions. In accordance with the proposed provisions of section 110 of the above Bill, strikes would be permitted in the agricultural, stock-raising and forestry sectors. The Government representative was of the opinion that the prohibition of the right to strike for these workers was discriminatory and violated the principle of legal equality. He therefore undertook to request the technical assistance of the ILO with a view to formulating draft legislation to eliminate this restriction. The above information once again demonstrated the commitment of the Government to complying with the recommendations of the Committee.

The Workers' members recalled that the Committee had examined in detail the application of the Convention by Costa Rica in 1993. One of the major concerns of the Committee, apart from the right to strike and several violations of the principles of freedom of association, had concerned the solidarist movement. They noted that the Government had taken into account the observations and comments of the Committee of Experts, as well as of this Committee, in the establishment of the relevant draft legislation. However, they regretted that serious problems remained in practice. According to some information, a growing number of employers were using these non-representative associations to free themselves from the obligations contained in the collective agreement. They insisted that the draft legislation, which had been formulated more than two years ago with the technical assistance of the ILO concerning a pension fund for workers and the democratization of the economy, be adopted without any delay in order to ensure that all trade unions could enjoy the right to manage the unemployment compensation fund.

As regards the prohibition on foreigners from holding office or exercising authority in trade unions contained in section 60 (2) of the Constitution, the Workers' members reiterated the position that they had adopted in 1993 and once again requested the Government to re-examine the question so that workers could freely elect their representatives, in full conformity with the provisions of the Convention.

As regards the limitations on the right to strike, they recalled the conclusions adopted by the Committee of Experts in paragraphs 158 and 159 of the 1994 General Survey on Freedom of Association and Collective Bargaining, in which it was stated that the right to strike should not be subject to any restrictions or prohibitions in the public sector, with the exception of civil servants exercising authority in the name of the State or in essential services, in the strict sense

of the term, namely services that could endanger the life, safety or health of the population if they were disrupted. As the Committee had stated, they considered that transport services in general were not essential services in the strict sense of the term. They stressed that the Government should take all necessary measures to eliminate all limitations on the right to strike in the public sector, as well as in the agricultural, stock-raising and forestry sectors. They hoped that the Government would in the near future adopt draft legislation on public services which contained limitations on the right to strike in accordance with the observations formulated by the Committee of Experts and this Committee.

Finally, while they noted that several draft legislations covering a number of issues raised by this Committee in 1993 had been prepared with the technical assistance of the ILO, they were very concerned about the delays encountered, as well as the contradictory practices, which could hinder the effective implementation of the Convention. They emphasized the fact that the Government should take the necessary measures in order to solve the problems raised by the Committee of Experts. In this context, it was essential that the new information provided by the Government's representative be transmitted to the Committee of Experts for complete analysis. The Conference Committee should consider re-examining this case at its next session.

The Employers' members thanked the Minister of Labour of Costa Rica for his extensive and clear comments. When the case had been considered by the Conference Committee in 1993, it had had to deal with a larger number of individual points raised by the Committee of Experts. The fact that this list had shortened gave grounds for believing that there was less to be criticized. Indeed, in 1994, the Committee of Experts had placed Costa Rica on the list of cases of progress in relation to the Convention.

With regard to the prohibition upon foreigners from holding office or exercising authority in trade unions, the Employers' members acknowledged that this constituted a restriction of the freedom of workers and trade unions to organize their own activities. Although the Minister had described the historical reasons for the measure, he had also indicated a readiness to adopt reforms and to request technical assistance from the ILO. It could therefore be assumed that changes would be made in this respect.

Concerning the prohibition upon exercising the right to strike in the public sector and in the agricultural, stock-raising and forestry sectors, the Minister had also provided extensive explanations. The Employers' members noted in this respect that certain changes had been introduced in practice and had been examined by the Constitutional Court to determine their conformity with relevant provisions of the Constitution. However, the country did not have uniform regulations applying to all cases of strikes and lockouts. On the question of whether the transport sector was an essential service, the Employers' members emphasized the differences between the various member States, with their varying structures, levels of development and types of economy. The situation could not therefore be judged in a uniform manner. With regard to the question of strikes in the public sector, they noted that the employer in such cases was the State, which normally appeared to be the stronger party. However, in many cases the State was in practice the weaker party. The category most affected by strikes in the public sector was the population as a whole, which could be held hostage by public sector workers. It was for individual States to draw up the necessary limitations in order to achieve a good balance as regards strikes. Since the Convention and other related international instruments set out only general principles, without any detailed provisions, the principles in question had to be applied by each State according to its national situation. The Employers' members were encouraged by the readiness expressed by the Minister to adopt changes and adjust to the criticisms of the Committee of Experts. Further improvements could therefore be expected. Much of what had been criticized in this case could be explained by the historical background of Costa Rica, with the State holding particularly widespread monopolies in many areas. This had been changed gradually, but in some areas the labour legislation had not been fully adapted. It would appear that Costa Rica was set on the right path and realized that the internal discrepancies in its regulations relating to freedom of association needed to be resolved. In this respect, the Employers' members noted that it was the practice of the Conference Committee to re-examine the cases on which it reached its own conclusions. This had the effect that many cases came up before the Committee year after year. However, the Employers' members believed that cases such as the present one would not require re-examination at the next session of the Conference Committee and that further action should depend on the comments of the Committee of Experts in its next regular report on the case.

The Workers' member of Costa Rica supported the statements of the Workers' members. In Costa Rica, strikes were forbidden in the public sector and collective bargaining did not exist. In the last 50 years, only twice had strikes been declared legal in sectors in which strikes were permitted by the legislation. Even where a strike was legal, such as in the case of LACSA, situations were reached in which workers were dismissed, collective agreements abrogated and legal proceedings were still pending five years after the event. The Government had not followed the recommendations of the direct contacts mission or of this Committee, which had requested it to let trade unions manage their pension funds themselves (forbidden by Act No. 7360). The few concessions which had been granted to the trade unions were the result of the action of the AFL-CIO, which had requested the United States authorities not to grant trade benefits to Costa Rica. Finally, he referred to Report No. 305 of the Committee on Freedom of Association concerning the case of FERTICA SA Workers' Association, which involved anti-trade union dismissals of hundreds of workers. The Committee on Freedom of Association had expressed its concern at the delays and lack of effectiveness of procedures in a considerable number of cases. These deplorable delays in so many cases had to be reduced. He wondered whether the future would bring about the disappearance of the trade union movement in view of the fact that neither direct contacts missions nor ILO technical assistance had succeeded in changing the attitude of the national authorities.

The Workers' member of Argentina recalled that the Government of Costa Rica had undertaken to bring its legislation into conformity with the provisions of the Convention. The Labour Code prohibited the exercise of the right to strike in the public sector, as well as in the agricultural, stock-raising and forestry sectors. The Government had indicated the existence of draft legislation to modify the current legislation. However, it was regrettable that the statements of the Government showed its intention to maintain these legal restrictions. Strikes were the most legitimate weapon available to workers. It was for this reason that the concept of "essential services" needed to be structured and limitative. The ending of discrimination against public sector workers had been difficult for the ILO to achieve in view of the reluctance of governments to accept freedom of association and collective bargaining. Conventions Nos. 151 and 154 clearly illustrated the workers' struggle to obtain equal treatment in the field of fundamental rights. These Conventions, with few exceptions, were applicable to all workers in the public sector. It was for this reason that the Government of Costa Rica needed to abrogate all provisions which restricted the right to strike, and which limited the full application of the principles of freedom of association and collective bargaining. Nevertheless, the existence of legislation was not sufficient: practical agreements were needed for the effective exercise of trade union rights. The Government should provide information on the issues raised and demonstrate as soon as possible that the rights contained in the Convention were guaranteed in the country. He noted that the statement of the Employers' members on the right to strike in general was out of place. The value and legitimacy of the right to strike as a means of defending and promoting workers' rights could no longer be questioned. In certain situations, strikes were the only means available to workers to defend their rights. Experience from the world over showed that workers knew when and how to use this right. Of course, there had been periods when this right had been repressed, but it was useless today to try to restrict it, despite the current trend towards globalization. He stressed the fact that the workers of the European Union and of MERCOSUR had clearly shown over the past few years that the exercise of the right to strike was the only way for them to make their voice heard.

The Workers' member of the United States reminded delegates that those who did not learn from history were doomed to repeat it. In the case of Costa Rica, it was the Government which had not learned from history, but the Costa Rican labour movement and the workers that it represented who had been doomed to the repetition. Costa Rica had been no stranger to the Committee on Freedom of Association, with over 40 complaints filed against it since 1967. Ironically, Costa Rican labour law had undergone certain reforms, although much of the long-standing law had been interpreted and enforced in an even broader manner, rendering the violations of the Convention even more chronic. With regard to the prohibition upon the right to strike in the public sector, the Committee of Experts made particular reference to the air transport sector and had called for the prohibition to be limited to public servants exercising authority in the name of the State or in essential services in the strict sense of the term. The Committee of Experts had hoped that the Costa Rican Government would take steps to eliminate the broad prohibition placed on the trade union leadership role of foreigners and the prohibition of strikes in the public sector, and in the agricultural, stock-raising and forestry sectors. However, the matters covered by the Committee of Experts only constituted a fraction of the problems related to freedom of association in the country. It remained virtually impossible to create a trade union in the private sector, including the nine export processing zones in the country, because trade union activitists were constantly dismissed and blacklisted without any effective protection. As a result, collective bar-

gaining was becoming almost non-existent in the private sector. The prohibition of the right to strike in the public sector only therefore formed one part of a much broader problem. In practice, strikes were banned in about 65 per cent of the manufacturing and service sectors which were designated as being of public interest. In addition to the sectors mentioned by the Committee of Experts, the ban on strikes effectively included insurance, banking, oil and related industries, electricity, water, communications, cement, education and health care. Not surprisingly, only two strikes had been declared legal in the country over the last 50 years. It was no secret that the Costa Rican Government had actively opposed any linkage and conditionality as regards labour rights in the trade integration process. The question therefore arose as to whether Costa Rica would respect the ILO and its supervision process. He hoped that the Government could learn from history and begin to take seriously the conclusions contained in the report of the Committee of Experts, despite the fact that these conclusions did not address the entire crisis as regards freedom of association in the country. He therefore implored the Government to stop the victimization of Costa Rican workers and to ensure that a sad history did not repeat itself.

The Workers' member of Colombia noted that the Committee was confronted with a very clear case of the violation of the Convention by the Government. He recalled that it was a common feature in Latin America to prohibit non-national workers from holding office or exercising authority in trade unions, as well as to prohibit strikes in the public sector. He noted that the trade union movement had always criticized policies which seriously infringed freedom of association. In the present case, however, the violation of the Convention was more serious, since strikes were also prohibited in the agricultural, stock-raising and forestry sectors, and in air transport. Workers could not remain passive with regard to such provisions, which seriously violated trade union rights. He recalled that strikes were never an end in themselves, but rather the ultimate means available to workers when confronted with the intransigence of governments or employers. Finally, he emphasized that the Committee on Freedom of Association had, on numerous occasions, reiterated that the right to strike was an inherent element of freedom of association and that it had developed the concept of essential services with a view to determining the cases in which the right to strike could be restricted or prohibited. International Conventions should be applied in good faith and national law should not be invoked, as the Government of Costa Rica had done, to justify a prohibition which covered all public services.

The Workers' member of Greece shared the opinion expressed by some speakers that some legal progress had been made since 1993. However, these interventions, as well as the observations of the Committee of Experts, also highlighted serious problems of application of the provisions of the Convention. He was of the opinion that this case should be evaluated in the next report of the Committee of Experts in order to decide whether it should be re-examined by the present Committee. As regards the restrictions on the right to strike, he noted that the Government representative had stated that this right applied to all workers employed in non-essential services. He considered, however, that the right to strike should be universally recognized and that, on the question of the services to be maintained, the trade unions always displayed a sense of responsibility, as they were fully aware of the importance of public support for the success of any strike action. The services that were essential should not be determined unilaterally by the Government, but through negotiations with the trade unions concerned.

With regard to the prohibition upon foreigners from holding office or exercising authority in trade unions, under article 60 (2) of the Constitution, it was difficult to comprehend the attitude of governments, including that of the Government of Costa Rica, many of whose populations lived and worked abroad. He recalled that Europe had experienced a significant level of migration in the aftermath of the Second World War and that several immigrants now held key positions in the trade unions of their countries of residence. This involvement facilitated their integration and permitted them to take part fully in the economic and social development of their new country. He expressed the firm hope that the Government would take all necessary measures to abolish the prohibition upon foreigners from exercising authority in trade unions.

The Workers' member of Germany noted that some progress could be discerned in this case. However, he still entertained great doubts as to whether the situation in Costa Rica was in conformity with international public law. Just as in the past, there continued to be serious violations of the Convention, with a core group of workers denied one of their fundamental rights. In particular, the concept of essential services in the country was interpreted in a very broad and arbitrary manner by the Government, resulting in a misleading and abusive interpretation of the categories of workers covered by this term. The facts of this case made it clear that it could not be left to each individual State to set its own limits in this respect. If the approach referred to by the Employers' members, under which the concept of essential services would be interpreted differently from country to country, were to be applied in practice, this would amount to a denial of this core Convention. The Convention should be interpreted in a uniform manner in accordance with the usual jurisprudence. He therefore supported the interpretations of the Committee of Experts, and their references to the work of the Committee on Freedom of Association, which had been extremely helpful in developing a definition of essential services. Care would need to be taken in future to ensure that such services were interpreted in a restrictive manner. He therefore appealed to the Government to apply the spirit and letter of the Convention in its law and practice. He recalled in this respect that the right to strike was a universal right and should not be limited in the case of categories of workers who were employed by the State.

The Government representative of Costa Rica distinguished between the remarks made during the discussion by the Employers' and Workers' members, and those made by individual Workers' members. He thanked the Employers' members for the considered manner in which they had discussed his intervention. They were the true guarantee of how the work of the Organization should be handled if it were to be successful. The strength of the Organization lay in tolerance and respect for the points of view expressed by all parties. He hoped that such respect would continue and would constantly strengthen the ILO.

However, certain Workers' members of Costa Rica did not appear to understand what was meant by the rule of law. He specified that the rule of law guaranteed what was known in legal commentary as due process, which meant the possibility for all the parties to fully state their case before a decision was reached. If matters were not resolved with the rapidity desired by many, this was due to the fact that the various parties, but not the Government, raised preliminary motions which delayed the proceedings. This so-called delay was necessary for reasons of due process. If due process were not observed, the parties would subsequently be able to complain that their right of defence had been violated. Both workers and employers benefited from the guarantees provided by due process that their points of view, evidence and propositions would be taken into account in all the solutions that were reached. In this respect, he noted that, in accordance with the recommendation of the Committee on Freedom of Association in Report No. 305, an expression of his concern at the time taken to resolve matters before the labour courts had been transmitted to the President of the Supreme Court. The President of the Supreme Court had in turn transmitted that concern to the labour courts, which would take the necessary measures. However, it was not for the Executive Authority to instruct the President of the Supreme Court or the Judicial Authority as to the action that should be taken. He respected the independence of the different powers in the Republic, which was another basic element of democracy.

He informed the Committee that one of the Workers' members of Costa Rica had described a situation that did not exist in his country, thereby giving an erroneous impression of the real situation. His country was about to complete three years of absolute industrial peace, based on constant dialogue with the representatives of workers and employers. Just last week a wage increase of between two and three points above the level of inflation for all workers in the private sector had been negotiated with the trade union federation presided over by the same Workers' member. This was a good illustration of the industrial climate in his country. He added that the trade union movement had the right to bring all of its concerns before the Supreme Labour Council, which was composed of three trade union representatives, three representatives of employers and three Ministers. The Workers' member in question and his representative on the Supreme Labour Council had never referred to the matters that he had raised in this Committee.

On the question of the rapidity with which draft legislation was examined, he stated that the political situation of the country and its democratic system made it obligatory to submit draft legislation to Parliament, which was composed of representatives of the various sectors of society. The legislation was then discussed in Parliament in order to reach an agreement. Matters would not be resolved in his country by means of force. By way of illustration, in the case of the Bill to transform the subsidy for termination of employment, the stimulus had come from the political movement that was currently in power. There had been almost no participation by the trade union movement. The fact the Bill had not yet been adopted had not been due to the lack of political will by the Government, but to matters related to the internal workings of Parliament, which was sovereign in this respect. The Government's influence had been important, but not decisive. Being misinformed about this process meant that those concerned were not aware of how a fundamental institution of a democratic system functioned.

As regards the restrictions placed on foreigners, he stated that Costa Rica had shown its solidarity by receiving non-nationals who

accounted for over 15 per cent of its economically active population. In accordance with the Political Constitution of Costa Rica, non-nationals had to be given housing, education and free health, even if they were not legally resident. The Government had given migrants the opportunity to obtain a work permit in order to regularize their work situation, even if their migratory status were not resolved. The Costa Rican people had given ample proof of its solidarity towards foreigners throughout its history. Its legislation would be brought up to date, as stated in this Committee today.

In conclusion, he supported the concept of international labour law covering labour matters, even within the countries of the region, as he had stated in interventions on the Report of the Director-General.

The Workers' members endorsed the opinion expressed by the Employers' members that some prudence was required in determining the cases to be examined next year. However, they recalled that, in the case of Costa Rica, their proposal was limited to the Committee envisaging such an examination if it considered it appropriate. They also agreed with the evaluation of the Employers' members that some progress could be observed on a number of issues which had already been discussed by this Committee. However, they expressed serious reservations as regards the two issues raised by the Committee of Experts in its observation. The additional information provided by the Government representative might indeed reveal positive developments, as indicated by the Employers' members. But this case required detailed and in-depth examination by the Committee of Experts. Finally, they urged the Conference Committee to request the Government to adopt draft legislation as soon as possible that was in conformity with the Convention, as well as the necessary measures to ensure its implementation in practice.

The Committee took note of the detailed information provided by the Minister of Labour and observed that, in spite of the direct contact missions to the country which had taken place in 1991 and 1993, the Committee of Experts observed that significant differences still remained between, on the one hand, legislation and national practices, and the provisions of the Convention on the other. The Committee hoped that the Government would adopt the necessary measures so that the prohibition on foreigners from holding office or exercising authority in trade unions would be eliminated, as well as the serious limitations imposed on the right to organize in the public sector, and in the agricultural, stock-raising and forestry sectors. The Committee took special note of the statement made by the Minister of Labour of Costa Rica who requested technical assistance from the ILO. It hoped that this technical assistance would be given rapidly so that the Committee of Experts would be able to verify that substantial progress had been made in the application of this fundamental Convention.

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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tion.

Swaziland (ratification: 1978). The Government supplied the following information:

With regard to Article 2 of the Convention, the status of the Prison Staff is comparable to that of the Royal Swaziland Police and the Swaziland Defence Force: all three are considered as part of the armed forces.

The obligation for workers to organize along industry lines is not known to pose any functional problems and no complaints have been submitted by organizations so far. There is a very small labour force in Swaziland and the multiplicity of unions within the same industry may interfere with the strength of labour unions. The risk facing unions in Swaziland as regards multiplicity is that some unions may exist on paper only, with no real power. Similarly, the power of the Commissioner of Labour to refuse to register a union is due to the small size of the labour force.

There has been a change since the entry into force of the Industrial Relations Act, 1966. Section 41(1) of the Act only provides for consultation of the Minister as opposed to seeking his authorization, which was the case under the 1980 legislation.

With regard to Article 3 of the Convention, the limitation on the activities of federations is necesarry to avoid jurisdictional conflicts between federations and unions. Limits on carrying out political activities are a question of degree. According to the terms of Section 42(1) of the Industrial Relations Act, 1996, federations are en-

titled to express views on any matter of public administration and public policy. Beyond this point, however, federations risk violating state security-oriented legislation.

Concerning the prohibition of strike action in the postal and public services, this is due to the importance of these services. The teaching service, however, has been removed from the list of essential services (Section 73(6)(a) of the Industrial Relations Act, 1996).

As in any country, the national interest is of paramount importance. The Minister, however, is not the final authority in determining the national interest: his perception of national interest has to undergo the test of the court (Section 70 of the Industrial Relations Act, 1996).

With regard to Section 12 of the 1973 Decree on Meetings and Demonstrations, it is not the intention of this Decree to restrict labour organizations which operate as labour organizations (see also Section 40(2) of the Industrial Relations Act, 1996).

The Industrial Relations Bill of 1995 has now been enacted. The Employment Amendment Bill is still before Parliament.

In addition, a Government representative, the Minister of Labour and Public Service, reaffirmed his Government's commitment to upholding the principles of the ILO as enshrined in its Constitution and the Declaration of Philadelphia. He supported the sentiments expressed by various delegations that had reiterated the need for strengthening the supervisory machinery for the sake of realizing the goal of social justice. There was an equal need to strengthen the ILO's advisory services in order for the constituents to reap the maximum benefit of their membership in the Organization. Ratification of standards in itself was not enough since, after ratification, countries needed to implement them. Of the 31 Conventions ratified by Swaziland, his country had implemented them all, although some discrepancies had been observed. He referred to the written information provided to the Committee. Referring to the observation of the Committee of Experts on the extent to which the Industrial Relations Act, 1996, was found wanting in relation to the Convention, he had noted, with great interest, that it acknowledged that his Government had tried to some extent to bring the law and practice into line with the Committee's previous comments on the legislation, by removing the teaching service from the essential services list. At the same time, some discrepancies had been observed which needed to be rectified. In a document prepared for a meeting of the Labour Advisory Board due to take place on 27 June 1997, his Government would bring these points to the attention of that Board in an effort to bring the recommendations already proposed by the Labour Advisory Board into conformity with ILO standards as much as practice allowed. This arrangement was in keeping with the assurances he had given during the 268th Session of the Governing Body during which he had stated that his Government had no aversion to any proposal to amend the current legislation. His Government was committed to social dialogue and believed that all doors to social dialogue should be open for all concerned. The Prime Minister had indicated that the Industrial Relations Act would be amended if it threatened the nation's peace. This policy statement was later drafted into the Government's Economic and Social Reform Agenda, which was a reform programme with specific deadlines. If all went well and representatives of both capital and labour cooperated with the legislative reform programme, a Bill would be ready by the end of August 1997. The speaker encouraged the Office to consider focusing technical cooperation in his country as a matter of urgency. In this regard, a tripartite meeting of the Swaziland delegation was scheduled in Geneva on 16 June 1997, to be chaired by a senior official of the ILO, and to form part of an ongoing process of consultation and assistance which had begun earlier in the year when his Government's attention had been drawn to the discrepancies in the Industrial Relations Act. It was to be hoped that such interaction would go a long way towards addressing the situation through constructive dialogue.

The Workers' members pointed out that the previous year they had noted that this was one of the most serious cases before the Committee. It was therefore of grave concern that a further deterioration rather than an improvement had occurred. The climate of fear, intimidation and harassment of trade unionists continued. In its observation, the Committee of Experts had noted that the 1996 Industrial Relations Act not only perpetuated most of the previous discrepancies between the legislation and the Convention, but contained new provisions which contravened even further some of the core requirements of the principles of freedom of association enshrined in Convention No. 87. The Act imposed penal sanctions for legitimate trade union activities. Section 30 of the Act granted the Labour Commissioner the power to refuse registration of a trade union if a union already existed in that sector. Moreover, the Act prohibited federations from calling rallies or mass meetings, all of which was in violation of the principles of freedom of association. The Committee of Experts made explicit mention of section 40(3) of the Act which prohibited a federation or any of its officers from causing or inciting the cessation or slowdown of work or economic activity upon punishment of imprisonment. Equally severe penalties applied to organizations or office holders calling for, organizing, or giving financial support to strikes in essential services. However, the Act gave a broad definition of essential services and the Minister of Labour had unilateral powers to amend this definition. The Attorney-General could apply for an order to stop a strike and the Minister of Labour could apply to ban a strike on the basis of national interest which was not defined. The Act severely violated the right to organize and to strike which was clearly contrary to the decisions of the Committee on Freedom of Association which had established that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. The Government had introduced this Act without any direct consultation with the social partners. Furthermore, when a tripartite forum rapidly approved a protocol containing 62 unanimously agreed amendments to the Bill, the Government took no heed and had its own original version of the legislation adopted. The Workers' members noted that, according to the direct contacts mission, the Government had been unable to give any convincing explanation for the refusal to amend the legislation so as to take account of the subsequent proposals of the Labour Advisory Board submitted during March 1996. These proposals were substantially similar to those contained in the tripartite protocol. In addition to this new Act, there were other legislative provisions which violated the requirements of Convention No. 87. The 1973 Decree on meetings and demonstrations restricted the right of organizations to hold meetings and demonstrations. Under the Public Order Act, 1963, police permission was needed for certain meetings and public gatherings. Moreover, the police could attend union meetings. Recent events gave cause for great concern. In January 1997, the Swaziland Federation of Trade Unions (SFTU) called a stay-away in an attempt to put pressure on the Government to negotiate 27 demands which related, inter alia, to economic, labour, social and affirmative action issues and called for the lifting of the state of emergency, imposed since 1973, which remained in force. Tripartite discussions had agreed that immediate action could be taken on 16 of these 27 demands if the political will to do so was there. The Committee on Freedom of Association had decided that the two actions taken in support of the 27 demands — one in January 1996 and another in January 1997 — constituted legitimate trade union activity. It had considered that the declaration of illegality concerning these national strikes, taken in protest against the social and labour consequences of the Government's policy, constituted serious violations of freedom of association.

The Workers' members outlined other infringements, in practice, of the Convention: between the night of 31 January-1 February, 1997, four leaders of the SFTU were arrested under section 12 of the Public Order Act, 1963, on charges related to intimidation, for which bail was not granted. All were subsequently acquitted. In dismissing the case, it was reported that the judge used harsh words to the effect that there had never been a case to answer in the first place. This reflected a similar position taken by the judge who had presided over the case against Mr. Jan Sithole of the SFTU and other trade union leaders taken in January 1996, and who was subsequently demoted. The Government was openly using the media to threaten trade unionists and trade union activity. There was evidence of intimidation of the media not to give coverage to trade union activities or the SFTU. The Workers' members noted that, despite the comments made by the Government representative in the discussion of this case last year, broadcasting was still listed in section 73 of the Industrial Relations Act as an essential service, despite the pertinent decisions of the Committee on Freedom of Association. The Government was continuing to use the police and armed forces directly to break up trade union meetings and disrupt legitimate trade union organization, such as the 1 February 1997 raid and search without warrant of the SFTU offices. It was using bullets, tear gas and beatings to break up assemblies, such as the 11 February 1997 shooting at Big Bend. It was perpetuating and intensifying the climate of fear and intimidation surrounding trade unions and trade union activity, such as the incident on 3 February 1997 when 150 armed police fired on 23 General Council members of the SFTU and ordered them to go to a local police station where they were locked in a tear gas filled room, beaten and individually questioned for several hours. It was extending the violence and intimidation to encircle the families, friends and relatives of those trade unionists, such as the February 1997 harassment of Mr. Sithole's mother and close relatives while he was in jail. The Workers' members stressed that the Committee on Freedom of Association had stated clearly that freedom of association could only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, were fully respected and guaranteed. Violence, fear and intimidation and the lack of freedom of expression were incompatible with Convention No. 87, as was the lack of democratic process. So it was

with deep concern that the Workers' members noted that there had been no progress on changing the national Constitution, since Swaziland was the only south African country where multi-party democracy had not been introduced. The suspension of the SFTU was now lifted, but not so for the trade unions which had been deregistered under the Act just two weeks ago, and which had lost their right to function, to collective bargaining and to represent their members on the Labour Advisory Board. This deregistration had been carried out by the Labour Commissioner on the spurious grounds that the unions had not submitted their annual returns, even though the Act did not define the period of the financial year. Such administrative dissolution of trade union organizations constituted a clear violation of Article 4 of the Convention and was a measure which should be taken only by judicial decision so that the rights of defence were fully guaranteed.

The Workers' members urged the Committee to adopt extremely firm conclusions in this case since the Government appeared, at best, complacent and, at worst, contemptuous of the supervisory procedures and authority of the ILO. It was time to give a clear message to the Government as there had been ample opportunity to make progress and this had not happened. In practice, the situation had deteriorated. Specifically, the Workers' members wanted to see, within a clearly defined timetable, progress in accordance with the comments of the Committee of Experts and the decisions of the Committee on Freedom of Association on the following points: amendment of the 1963 Public Order Act so that it would no longer be used to oppress legitimate and peaceful strike action in contravention of the principles of freedom of association; repeal of section 12 of the 1973 Decree which placed important restrictions on the right of organizations to hold meetings and demonstrations, so that trade union organizations could operate freely without fear of police interference in trade union affairs; amendment of the 1996 Industrial Relations Act to bring it into conformity with the requirements of the Convention, giving due consideration to the proposals made by the Labour Advisory Board. They asked that the Government ensure that the social partners were fully involved in this process and that the technical assistance of the ILO be sought so that progress could be reported before the next meeting of the Governing Body in November 1997; that it stop any further harassments, threats, malicious arrests, intimidation and victimization of workers, their leaders and their families; and authorize freedom of the press and freedom of expression; establish independent inquiries into the many incidents which had taken place over recent months, including the dismissal of Mr. Jabulani Nxumalo, Assistant General Secretary of the SFTU; and enter into positive and meaningful negotiations on the 27 demands. The Workers' members concluded that this was a case of the most gross, wide-ranging and fundamental violation of the Convention and the principles of freedom of association. The Government should immediately commit itself to the full implementation of the recommendations of the direct contacts mission in a defined, short period of time and accept permanent monitoring of the implementation of these developments by the ILO.

The Employers' members recalled that the application of Convention No. 87 by Swaziland had been already examined by the present Committee in 1996. This case involved numerous restrictions on the exercise of the fundamental rights and freedoms guaranteed by the Convention and, in particular, interference in the internal affairs of the trade unions; the non-recognition of the right of association of a certain group of workers; the power of the Labour Commissioner to refuse to register trade unions if he was satisfied that an already registered organization was sufficiently representative; and the restrictions of the right to organize meetings and to hold peaceful demonstrations. These were flagrant violations which were, on the whole, the same that had been brought to light last year. On the question of restrictions on the right to strike, the Employers' members referred to their own well-known position according to which the point of departure was not an unlimited right to strike. There was no basis in the Convention for the unlimited right to strike, the provisions of the Convention would be infringed where the right to strike was constrained to such an extent that it no longer existed. He recalled that strikes always had an impact not only on the interests of the conflicting parties but also on the rights of persons who were not concerned with the conflict of interests. It was also reasonable to balance the interests of the conflicting parties on the one hand, and of the general public on the other. As for what concerned the qualified majority required when voting on strike action, it was not excessive in itself. What was worrying was that the Industrial Relations Act, 1996, worsened, not improved, the situation. Referring to the direct contacts mission which had taken place last year, they stated that an invitation for such a mission usually constituted proof of the readiness of the Government to change its law and practice to improve the situation. However, the position of the Government with respect to the required changes remained unclear. Although the Government representative mentioned, for example, the existence of tripartite consultations, he did not explain in which manner and on what subjects these consultations were held. Turning to the conclusions of the contacts mission report, the Employers' members recommended to incorporate those points into legislation on which the social partners had already reached an agreement. The Government should accept these recommendations and incorporate them into the legislation. It should provide detailed information, so as to enable this Committee to review the case, if necessary.

The Workers' member of Swaziland pointed out that his country was a signatory to various national instruments but had been in a state of emergency since 12 April 1973 when the rights of citizens had been usurped. This left workers as the only voice for the downtrodden and they had presented to the Government the popular "27 demands" which dealt with, inter alia, labour-related, economic, human and civil rights issues. The Government had ignored the demands, but the SFTU asked for a tripartite forum to look into them through dialogue. A series of tripartite structures was thus set up which deliberated on all the issues and advised the Government accordingly, but again, it ignored all their recommendations. Several international and regional workers' organizations visited Swaziland between 1995 and 1997 in order to help find a solution and their advice was also ignored by the Government on the pretext that it constituted foreign interference in national sovereignty. The Government's inaction had been met with a wave of industrial action, to which the authorities reacted with arrests and the shooting of workers, the lodging of applications in the High Court, for court injunctions to declare intended strikes unlawful; the issuing of extraordinary gazettes declaring the strike unlawful if the Government failed in its court applications; and judges who refused applications would suffer reprimands, demotion and/or dismissal. He considered that the Government had acted in bad faith since it acknowledged the violations of the Convention before international fora and yet remained intransigent at home. The Government had deceived the social partners because it had promised to table amendments to the Act in March 1996, but to date, no such amendments were before Parliament. Furthermore, the Government was not truthful when it stated that it was not aware that trade unions were being harassed: its security forces regularly raided trade union offices, interrupted trade union meetings, detained and arrested trade union leaders and members (including the 23 members of the general council of the SFTU) and physically assaulted them. After describing some of the infringements in practice of the Convention, the speaker stated that the 1996 Act's provisions were a flagrant legislative violation of the Convention and in serious breach of the principles of freedom of association. He expressed the belief that Swaziland and other Governments which were also members of the ILO Governing Body must be advocates and die-hard defenders of ILO principles, especially social justice; and, as such, must lead by an example of exemplary behaviour. Therefore, he agreed with the Committee of Experts and the Committee on Freedom of Association that the Government should bring the legislation into conformity with the requirements of the Convention. The 27 demands should be dealt with seriously once and for all. A clear deadline had to be set for the Government specifying when these issues would have to be tackled and resolved, and the ILO's technical assistance could help in the amendment of the Act. He proposed that this case be mentioned in a special paragraph of the Committee's general report.

The Employers' member of South Africa pointed out that in this case there had been many promises but little progress. The Committee of Experts' observation noted that not only did the 1996 Industrial Relations Act perpetuate the previous discrepancies between the legislation and the Convention, but it contained new provisions which further contravened the terms of the Convention. The Government's behaviour in drafting this Act disclosed a series of breaches of undertakings made to the social partners. In March 1994, a tripartite committee had been established by the Government to consider a series of demands made by the SFTU and significant progress had been made on 21 of the 27 points raised by the Federation. Although the Government expressed its support for some of the recommendations of the tripartite committee, it indicated that it would formulate its own proposals in the form of amendments to the legislation. Early in 1995, the Government published a draft Bill for comment and later tabled it in Parliament but the social partners had not been consulted. Further discussions were held between the Government and the social partners before the Bill reached the Senate because there was general disagreement with a number of its provisions. In July 1995 the tripartite forum adopted a resolution to the effect that it would identify unacceptable aspects of the Bill and attempt to agree on amendments acceptable to all parties. The Government undertook to submit these amendments at the same time as the Bill was presented to the Senate. In September 1996 the tripartite forum formally adopted a protocol containing 65 proposed amendments to the Bill. However,

the Government introduced the Bill to the Senate without the amendments. The parties in the tripartite forum expressed their dismay over this turn of events and the Government's good faith was questioned. After the enactment of the Act, further efforts to review it were initiated and the SFTU's concerns were referred to the Labour Advisory Board, which in March 1996, submitted proposals for amendments to the Minister. They had not yet been introduced in Parliament. So the history of this legislation reflected some form of general agreement between the social partners, but mostly a history of unfulfilled promises by the Government. The direct contacts mission that had visited Swaziland in October 1996 noted that no convincing explanation could be given by the Government for either its unilateral decision to redraft the Act or for its refusal to introduce the amendments to the Act proposed by the Labour Advisory Board. Therefore, while he had noted the Government representative's expression of support for the ILO's Constitution and Conventions, what was needed now was some progress in Government action. It should move without further delay to implement the recommendations of the direct contacts mission, with guidance and technical assistance from the ILO.

The Workers' member of the United States pointed out that this was the second consecutive year that this case, which involved fundamental violations of the Convention, was before the Committee. In addition to the violations of a legislative nature, as reflected in the observation of the Committee of Experts, this Committee had heard in great detail about the violations in practice, in particular the intensifying campaign of intimidation and harassment of union leaders and their families. This pattern of behaviour by the Government demonstrated its disdain for the ILO and this Committee. However, it was important to point out to the Government that its behaviour had caught the attention of the Committee of Experts and this Committee, as well as that of the international community. Therefore its days of operating in relative obscurity had passed. The Workers' members were following closely the developments in the country since the personal safety and welfare of members of the SFTU were at stake. If the Government intended to take its obligations arising from the Convention seriously, it had to put an immediate end to its campaign of intimidation and harassment against trade unions and their leaders. Moreover, it had to return immediately to the bargaining table with the SFTU and the employers to negotiate in good faith a revision of the Industrial Relations Act. This year, the Committee should send to the Government an even stronger message than its 1996 conclusions in the hope that it could be influenced to choose the path of the rule of law and respect for basic worker rights, rather than that of repression and increasing international condemnation.

The Workers' member of Zambia asserted that the Government representative had repeated the assurances that his Government had given to this Committee in previous years and had stated nothing new this year. Therefore he fully supported the view that the Government should commit itself immediately before this Committee to engage in effective and genuine dialogue with the workers and employers of Swaziland with a view to amending the Industrial Relations Act and other labour laws in line with international labour standards. Moreover, this action should be accomplished in a short time-frame.

The Government member of the United Kingdom welcomed the fact that a direct contacts mission to Swaziland had taken place and was pleased to note the readiness of the Government to continue its dialogue with the ILO. He supported the Government's request for further technical assistance to tackle the problems which had been identified. While his Government had been very concerned over the arrest in early 1997 of the principal trade union leaders of the SFTU, and had made those concerns clear to the authorities at the time, he was very glad that they had since been released. The Committee of Experts' observation had noted that the Industrial Relations Act, 1996, still contained a number of discrepancies with the provisions of the Convention. He was pleased to hear that the Swazi Government intended to rectify the situation and hoped that it would turn this commitment into concrete action as soon as possible.

The Workers' member of Norway, speaking on behalf of the Nordic Workers of this Committee, expressed grave concern over the violations of the Convention. In spite of appeals by the international community, missions from the ILO and the International Confederation of Free Trade Unions and interventions from trade union leaders from neighbouring countries, the Government had continuously harassed Swazi trade unions and their leaders. She fully supported the comments made by the Committee of Experts on the Industrial Relations Act. It was disturbing that a so-called democratic country still thought it was acceptable for workers not to have the right to strike, for unions to face major restrictions on their right to hold peaceful demonstrations and meetings or for the court to wind up a federation which had been actively campaigning on matters that were defined as political issues but that could not in fact be distinguished from occupational issues. Moreover, trade union leaders had been imprisoned, including the four senior leaders of the SFTU, for having threatened to go on strike over labour demands. Although they were finally released, democratic reforms and the opening of negotiations did not follow and matters had worsened. Just before the present Conference she had heard that the Government had suspended the activities of the SFTU and the 17 unions affiliated to it apparently because of failure to submit on time the 1996 financial reports. It was incomprehensible that trade union activities could be suspended for this reason. She assured Swazi workers that they had the support of the Nordic trade unions. The right to carry out trade union activities, including the right to strike, was so fundamental in Nordic countries that it was hard to believe the action taking place in Swaziland. It was not acceptable that in 1997 workers were denied their most fundamental rights.

The Government member of the United States supported the statement of the Government member of the United Kingdom and hoped that the recommendations of the direct contacts mission to Swaziland would be implemented soon.

The Workers' member of the United Republic of Tanzania endorsed the concern expressed by his colleagues concerning the gravity of the situation in Swaziland. The Government should in no way be proud of the fact that it had ratified 31 ILO Conventions while in practice it violated them daily. He therefore insisted that the Government adopt a clearly defined timetable of action towards applying the Convention, including the repeal of the Industrial Relations Act. It further needed to engage in much-needed dialogue with the SFTU.

The Workers' member of Zimbabwe indicated that the situation in Swaziland, contrary to the promises made here by the Minister in 1996, had deteriorated significantly. The Committee of Experts had identified two aspects to the problem, namely the national legislation and the situation in practice. The Industrial Relations Act, 1996, contained new provisions which contravened the Convention even further as highlighted in the Committee of Experts' observation. In practice, the Government had been harassing the leadership of the SFTU, together with the use of force to prevent workers from holding meetings and exercising their other rights under the Convention. While he supported the need for dialogue, he considered that the authorities were using dialogue as a delaying tactic. This Committee needed to act decisively by including this case in a special paragraph of its report.

The Government member of Zambia, the Minister of Labour and Social Security, expressed his concern over developments in Swaziland. He was of the view that the Government should take steps to move towards democratization and labour rights as had occurred in other countries in southern Africa. Only this could really ensure respect for trade union rights.

The Government representative indicated that he took seriously what had been stated in the Committee. It was obvious from the observation of the Committee of Experts, from the recommendations of the direct contacts mission, as well as from the debate that had just taken place, that the basic problems in respect of the Convention stemmed from the adoption of the Industrial Relations Act, 1996. He reassured the Committee that he had not just made empty promises; his country was genuinely ready to ensure that the provisions of the Convention were complied with. He assured the Committee that the document that had been prepared by the Labour Advisory Board with ILO technical assistance would be discussed on 27 June 1997, and that the social partners should be fully involved. The final amendment Bill would be passed through Parliament by August 1997. He concluded by stating that his Government, like this Committee, wanted the national legislation to be in conformity with the Convention and would take the appropriate measures.

The Workers' members noted that the Government representative had focused his reply on discussions that had taken place in relation to the Industrial Relations Act. However, the conclusions of the direct contacts mission went beyond the Act, since they also related to infringements in practice of the Convention. All that was required was that the Government agreed to commit itself to implement immediately all the recommendations of the direct contacts mission, including those concerning issues beyond the Act. The Workers' members also wanted a permanent monitoring of its attempts to implement these recommendations.

The Employers' members, referring to the recommendations of the report made by the direct contacts mission, insisted on their immediate implementation, particularly with respect to the questions on which the social partners had reached an agreement. Rapid changes were necessary to improve the situation and it would be necessary to review the case in the near future taking into account the regrettable further deterioration in the situation after the direct contacts mission. The Government should supply a detailed report on the amendments and changes brought to the situation. The Em-

ployers' members supported the proposal to mention this case in a special paragraph of the Committee's report.

The Committee took note of the written and oral information supplied by the Government representative, as well as the discussion which ensued. The Committee noted the concern expressed by the Committee of Experts and the Committee on Freedom of Association that, despite a direct contacts mission in October 1996 and specific progress concerning the education sector, the Industrial Relations Act, 1996, contained provisions which further violated the fundamental principles of freedom of association. The Committee expressed its deep concern for the numerous and major discrepancies between the national law and practice on the one hand, and the provisions of the Convention on the other. The Committee urged the Government to respect fully the civil liberties essential to the implementation of the Convention and to apply very rapidly the recommendations of the direct contacts mission, particularly those already agreed upon by the social partners. The Committee also urged the Government to take all the steps necessary to eliminate the restrictions on the right of workers to constitute organizations of their own choice, to hold meetings and to demonstrate peacefully, to formulate their programmes of action and to bargain collectively. The Committee trusted that the next report would indicate detailed measures adopted by the Government, with the assistance of the Office, to secure the full application of the Convention. The Committee decided to mention this case in a special paragraph of its report.

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PART ONE

Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

CONTENTS

Canada (ratification: 1972). A Government representative referring to an International Confederation of Free Trade Union's (ICFTU) document, noted at the outset that the ICFTU recognized in this publication that Canadian workers in both the public and private sectors had freedom of association to enable them to form and join trade unions. In addition, it was noted that Canadian legis-lation prohibited anti-union discrimination and required employers to reinstate workers fired for union activities, including strikes. He observed that other quotes from the document specified that work-ers in both the public (except for some police) and the private sec-tors had the right to organize and bargain collectively in law, al-though not always in practice and that most workers had the right to strike.

The speaker recalled that Canada recognized the key impor-tance of observing ILO principles on the right to organize and col-lective bargaining and protecting workers' rights. However, he stressed that governments, including the federal, provincial and ter-ritorial governments of Canada, were elected to make decisions and exercise their responsibilities for the welfare of their popula-tions as a whole. Governments had both a mandate and a duty in democratic societies to reconcile legitimate, but divergent, interests and conflicting demands for the greater public good. Referring to the specifics of the Committee of Experts' observation, he recalled that the Canadian Constitution recognized that the provinces had full control over labour relations within their jurisdiction. The infor-mation, therefore, provided to the Committee and concerning pro-vincial laws and practices, had been submitted by the provincial governments concerned.

Regarding the experts' observation on the procedure for the designation of "essential employees" under Newfoundland's Public Service Collective Bargaining Act, the speaker indicated that the public consultation process to which the Committee of Experts had referred had been completed. The joint labour and management Working Group of the Economic Advisory Council had submitted a detailed report with recommendations to the government con-cerned. A copy of the report would be provided to the Committee. The Working Group's recommendations on the issue of designation of essential employees were generally supportive of the provisions in the Public Service Collective Bargaining Act pertaining to essen-tial employees. In addition, an interdepartmental working group of the Newfoundland Government had completed its analysis of the recommendations and is now awaiting final directions. The speaker also specified that in the early 1990's there was some activity at the provincial Labour Relations Board related to establishing the proc-ess to designate essential employees. In all instances, labour and management voluntarily came before the Labour Relations Board with a joint agreement on employees to be designated as essential. It appeared that this represented a full endorsement by both labour and management for the existing provisions in the Act. The New-foundland Government, therefore, did not anticipate having to make further amendments to legislation governing essential em-ployees at this time.

Turning to the right to strike for hospital workers under the Province of Alberta's Public Service Employee Relations Act, he informed the Committee that in Alberta, at *approved* hospitals as defined by the Minister of Health, employees did not have the right to strike, nor employers the right to lockout. Approved hospitals included acute care facilities, but did *not* include community health services, mental hospitals and some long-term care facilities. At these other facilities and services, employees *did* have the right to strike and the employer had the right to lockout. Under the rele-vant Alberta legislation, the right, or not, to strike/lockout depend-ed more upon the nature of the organization providing the service rather than the type of work which employees performed within the organization. In fact the entire health care system in the province was regionalized about five years ago and although the government currently had no plan to amend its legislation, it continued to mon-itor how the labour relations framework was working, as service delivery evolved and became more integrated with a regionally co-ordinated system.

Regarding the Committee of Experts' observation on restrictions on the right to organize in agriculture and horticulture in the Provinces of Alberta, Ontario and New Brunswick the speaker indicated that, as regards Alberta, although primary agriculture farm workers were excluded from coverage under Alberta's labour relations legislation, there were no provisions in the labour legislation which would specifically prohibit any of these workers from *voluntary* negotiations with employers for whom they might perform services. In this regard, he gave the example of voluntary negotiations held outside the parameters of Alberta labour legislation between the province and the Alberta Medical Association. This group negotiated provincial fee schedules for its member physicians. Also, medical residents who were also excluded from the scope of the collective bargaining general scheme had negotiated terms of employment with the province's teaching hospitals.

As regards Ontario, the speaker stated that there were legitimate reasons for the exclusion of certain employees from statutory bargaining rights under Ontario's Labour Relations Act, but that the excluded workers continued to be free to form voluntary associations or unions outside the statutory collective bargaining regime. The unique characteristics of, and the nature of employment in, the agricultural sector raised serious questions as to the suitability and propriety of the regime of collective bargaining contemplated by the Labour Relations Act, in particular the dispute resolution mechanisms upon which collective bargaining depended, namely the right to strike and lockout, and compulsory arbitration.

As regards New Brunswick's labour relations legislation that a bargaining unit of agricultural workers comprised five or more employees, he stressed that this condition was necessary in order to free small agricultural, family farms from inappropriate legislative requirements.

The speaker expressed his Government's satisfaction at the positive comments made by the Committee of Experts in paragraph 3 of its observation, as regards the adoption of the federal legislation Bill C-19, an Act to amend the Canada Labour Code, and in particular, its prohibition of the use of replacement workers to undermine a union's representational capacity. Finally, he stressed his Government's acknowledgement and will to fully cooperate with the ILO supervisory system with respect to recently arisen cases currently before the Committee on Freedom of Association.

The Worker members expressed their gratitude to the Government for the information provided. They recalled that Canada had ratified the Convention in 1972 and that the Committee of Experts had reported several problems in the application of Articles 2 and 3 of the Convention in a number of provinces. In particular, the Committee had first and foremost requested additional information on the situation in the Province of Newfoundland. The Newfoundland Government had informed the Committee of Experts that it had introduced an effective procedure for the designation of "essential workers" and that the joint labour-employer working group had submitted a report proposing an amendment to the legislation on freedom of association. The Worker members had requested the Government to inform the Committee of Experts on the latest developments in this regard.

The Committee of Experts had also requested additional information from the Government of Alberta in respect of essential services in the health care sector. The Worker members expressed their support for the position clearly established by the Committee of Experts regarding the right to strike and regarding the few situations where this right could be restricted. The Worker members did not intend to discuss the modalities of the right to strike in the context of this case. Furthermore, they pointed out that trade union problems such as those experienced in the field would shortly be raised by the Worker member of Canada. Nevertheless, the Worker members had requested the Government's response to the issues raised by the Committee of Experts and the Government's assurances that the application of its legislation would be in conformity with Article 3 of the Convention, which provides that trade union organizations have the right to formulate their programmes of action. Moreover, the Worker members emphasized that point 3 of the Committee of Experts' report referred to fairly serious violations of Articles 2 and 3 of the Convention in the Provinces of Alberta, New Brunswick and Ontario. In particular, the Worker members criticized the recent laws passed in the Province of Ontario, which blatantly violated the Convention.

The Committee on Freedom of Association had recently received several complaints and it had formulated conclusions in Case No. 1900 regarding the denial of trade union rights to workers in the agricultural and horticultural sectors, kitchen workers, architects, lawyers, doctors and other categories of workers in the Province of Ontario. According to information received, several of these categories of workers had in fact established organizations and had concluded collective agreements. In Case No. 1900, the Committee on Freedom of Association had also noted that the new Act had also had negative repercussions on the right to organize in enter-

prises which had been bought out or taken over by the construction industry. Moreover, the Committee on Freedom of Association was currently examining Cases Nos. 1951 and 1975 concerning the prohibition on freedom of association for certain categories of workers, such as heads and deputy heads of schools and workers participating in social welfare programmes in the Province of Ontario. In this regard, the Worker members requested the members of the Committee on Freedom of Association to scrutinize the text of Case No. 1900, relative to the denial of trade unions rights to workers in the agricultural and horticultural sectors, to kitchen workers and other categories of workers. The 1995 Act had amended labour relations legislation in Ontario and now excluded categories of workers from essential legislation guaranteeing the effective exercise of the right to organize. The Worker members considered that this constituted an explicit and deliberate denial of a fundamental right and principle. They quoted in this regard the statement made by the Government of Ontario in paragraph 181 of Case No. 1900, referred to by the Committee of Experts: "The Committee notes that the Government considers that a statutory labour relations regime and collective bargaining dispute resolutions mechanisms are inappropriate for agricultural and non-industrial workplaces because of the low profit margins and unstructured, highly personal working relations". The Worker members considered that if this line of reasoning were to be followed, the majority of workers in the world especially in developing countries would be deprived of trade union rights. Moreover, the Government of Ontario had pursued a deliberate policy. Act No. 22, which took effect on 18 December 1998, pursued a specific and explicit objective mentioned as such in the text, namely, the Act denied workers participating in social assistance programmes the right to join trade union organizations. Another Act, dated 1 December 1997, excluded heads and deputy heads of schools from the scope of labour relations legislation and also significantly modified their collective rights. The Government of Ontario and the federal Government had also argued that these categories of workers could enjoy freedom of association under the common law system. However, under the Canadian legal system, freedom of association was ineffective beyond the framework of fundamental labour relations legislation.

In conclusion, the Worker members requested that the conclusions take account of the fact that the fundamental rights and principles were being jeopardized in the Provinces of Alberta, New Brunswick and Ontario. Moreover, they insisted on the importance of Articles 2 and 3 of Convention No. 87, namely, that all workers, without distinction whatsoever, should have the right to establish and join trade union organizations and that these organizations should have the right to formulate their programmes of activity. Finally, the Worker members emphasized that the pertinent legislation should be amended without delay to enable Canada to respect its international obligations with regard to the rights and fundamental principles recognized in Articles 2 and 3 of the core Convention.

The Employer members noted the information provided by the Government representative which supplemented the facts illustrated in the observation by the Committee of Experts. He further noted that a part of the Committee of Experts' comments had highlighted recent legislative developments in the country. The observation, however, contained some aspects with which the Employer members could not agree. He said that the right for workers and employers to establish organizations of their own choosing without previous authorization, including the right to formulate their programmes, as enshrined in Articles 2 and 3 of the Convention, constituted a good point of departure for the comments that had been made by the Committee of Experts. With reference to the situation in Newfoundland, he noted the statement by the Government representative to the effect that the social partners had agreed on the necessary legislative reform process, which had shown that tripartite consultations on the subject had taken place. In this respect, he supported the Committee of Experts' wish to be kept informed of developments in this regard. As regards the Province of Alberta, the situation was different, and the restrictions concerning the right to strike for hospital workers had been imposed by law. However, the strike ban was not applicable to all hospitals but only to some. The speaker referred to the Committee of Experts' point of view on the right to strike, which was considered to be a right substantially deriving from the right to organize and that, therefore, any restriction thereof should be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term as defined by the Committee of Experts. In contrast, the Employer members were of the opinion that the State had the right to define the term "essential services". They emphasized that the concept "essential services" could not be understood by a mere reference to the text of Convention No. 87. Although the Committee of Experts might wish to discuss the question whether or not work by kitchen staff, porters and gardeners constituted essential services in hospitals, such a discussion could not be part of a discussion regarding the application of the Convention. With respect to the rather positive observations regarding the adoption of Bill C-19, an Act to amend the Canada Labour Code (Part 1), which according to the experts had brought the legislation into greater conformity with the principle of freedom of association, he thought that in this respect the provisions concerning the right to strike and the right to lock-out had no relevance regarding the implementation of the principle of freedom of association. As regards the right to organize in agriculture and horticulture, they recognized certain lacunae in the law in this respect. However, the question whether or not the right to strike was restricted in this sector was neither a subject related to the Convention nor an issue raised by the Committee in their observation. In conclusion, the speaker recalled that the Employer members had always had a different view than the Worker members regarding the right to strike and that the Employer members agreed to disagree on this point. For this reason, he refrained from once again reiterating the well-known Employer members' argument on the subject. However, the arguments underlying the Employer members' view on the subject would be found in paragraphs 115 to 134 of the 1994 Conference Committee's report as well as explanations regarding the mandate of the Committee of Experts which has existed since 1926.

The Worker member of Canada stated that violations of the Convention in Canada were a persistent reality. To support this statement, he recalled the large number of cases concerning Canada which were brought before the Committee on Freedom of Association (CFA) and in which the CFA adopted conclusions calling on the Government to take measures to comply with the Convention. He regretted that very rarely, if ever, were the conclusions complied with. He recalled that, in 1985, a study and information mission was sent to Canada in view of the numerous cases of violations of basic principles of freedom of association. Ten years later, in 1995, the Government rejected the recommendation of the CFA that it make use of the assistance of the Office, in particular through an advisory mission. Shortly after, Bill No. 7 was introduced in which the Government of Ontario excluded agricultural and domestic workers and certain specified professionals from access to collective bargaining and the right to strike; terminated the existing organizing rights of these workers; nullified their current collective agreements; removed the statutory measures for protection against anti-union discrimination and interference on the part of the employer; removed successor rights and related employers' rights from Crown employees; and eliminated successor employer protection from workers in the building services sector. Bill No. 7 gave rise to an additional case before the CFA (Case No. 1900). In its recommendation on this case, the CFA strongly recommended that necessary measures be taken to ensure that these workers enjoyed the protection necessary to establish and join organizations of their own choosing; to ensure that the right to strike was not denied; to guarantee access for these workers to machinery and procedures which facilitated collective bargaining; to ensure that these workers enjoyed effective protection from anti-union discrimination and employer interference; to ensure that these organizations were re-certified; to revalidate the collective agreements pertaining to agricultural workers and professional employees; to ensure that the right to organize and collective bargaining rights were adequately protected in building services; and to draw the attention of the Committee of Experts to the legislative aspects of this case. The speaker stated that these recommendations had not yet been complied with. On the contrary, in the 309th Report of the CFA (March 1998) the Government indicated that it did not intend to amend the legislation to remove the exclusion of agricultural workers from any such statutory labour relations scheme. The speaker considered that this position was particularly questionable considering that agricultural workers and domestic workers were among the most vulnerable workers and that this type of work was often done by immigrant workers who worked in an environment where decent working conditions did not exist. Underlining the Government's statement that Bill No. 7 had established the appropriate balance of power between unions and employers and had facilitated productive collective bargaining, which the Government views as an important component of its strategy to strengthen the economy and create jobs, the speaker considered that to take away such fundamental rights such as the right to join a union, the right to strike and the right to negotiate from groups of workers was a strange way to establish an appropriate balance of power. The same was true for the Alberta case, where the right to strike was also denied to a group of workers who were not in any essential services in hospitals, such as gardeners.

The speaker noted the oral information provided by the Government as regards the case of Newfoundland and looked forward to examining the report to which the Government referred.

The speaker went on and recalled that, since Case No. 1990, six new complaints had been filed before the CFA. The first concerned Manitoban teachers to whom the right to strike was denied and for whom certain matters were excluded from collective bargaining or

from the jurisdiction of interest arbitrators (Case No. 1928 (Manitoba), 310th Report).

The second case dealt with the Government interference in arbitration and labour tribunals (Case No. 1943 (Ontario), 310th and 311th Reports).

The third case in which ILO assistance was recommended concerned the taking away of the principals' and vice-principals' right to organize, to strike and to negotiate; the interference in the collective bargaining process and the elimination of other protections (Case No. 1951 (Ontario)).

The fourth case dealt with a legislation entitled *An Act to prevent unionization*. This law ensured that people who were on social assistance and forced to work for the State so as to receive their social assistance would not have the right to join a union to be able to negotiate working conditions that used to exist for this type of work. For the speaker, in Canada, "workfare" was a new name introduced so as not to use "forced labour" (Case No. 1975 (Ontario)).

The fifth case concerned a back-to-work legislation introduced to end a strike in the postal service. The law was introduced right at the beginning of the strike to ensure that the right to strike provided by law was not going to be available to the workers. In this case the right to strike was taken away so that workers would have no collective strength to negotiate, the main reason to join a union, and so that the Government could impose to the arbitrator appointed under this legislation, some of the provisions that supported the employers' position. The speaker questioned whether, in this case, the federal Government shared the view of the Ontario Government that taking away the rights of workers recognized by law was an appropriate way to establish a balance of power between unions and employers (Case No. 1985 (federal)).

Lastly, the sixth case also dealt with a back-to-work legislation introduced against the power workers (Case No. 1999 (Saskatchewan)). In addition to these cases, the speaker informed the Committee that, recently, laws taking away the right to strike of workers in Saskatchewan, Newfoundland and at the federal level had been introduced.

The speaker concluded that he supported the position taken by the Worker members. He insisted that the right to strike is part of the collective strength workers are looking for when joining a union. Otherwise, he wondered what would be the incentive to form unions.

The Worker member of the United States expressed his support for comments made by the Worker members and the Worker member of Canada. He indicated that he was compelled to comment on the Canadian case, citing the close trade and investment relationship between the United States and Canada. He pointed out that many of the structures of the labour law regimes of the two countries were very similar, including the system of union certification based on majority worker authorization in defined bargaining units and the system of collective bargaining in the private sector. Additionally, many of the North American trade union structures were based on trade, craft and industry and were known as internationals, with affiliates from both Canada and the United States. Despite these similarities, however, the United States labour movement had also noted critical differences between the two systems. For example, the Canadian provinces had included more expedited bargaining unit representative certification processes, as well as legislation limiting or prohibiting permanent striker replacement. In his view, such differences partly explained the higher degree of worker organization in Canada as opposed to the United States. Therefore, he expressed deep concern with developments in Canadian labour law and practice limiting freedom of association rights for Canadian workers and increasing the possibility of employer interference in the exercise of the rights of workers to organize, strike and collectively bargain. Referring to the Committee of Experts' report as well as to the ICFTU's *Annual survey of labour rights*, he noted that certain job classifications were being excluded from protection under the labour laws in various Canadian provinces. In Ontario, the labour legislation excluded agricultural workers, domestic workers, architects, dentists, land surveyors, lawyers and doctors from legal guarantees securing workers' rights to organize and bargain collectively. Other categories of workers excluded were contract service workers, such as cleaning crews, food service workers and security guards, in the event of the sale of a business or a change of contractor. Additionally, amendments to the Ontario legislation prohibited workers participating in workfare programmes from forming unions, collectively bargaining or striking, as a condition for receiving welfare benefits. He indicated that this issue was of particular concern to workers in the United States, in light of the welfare reforms in his country. Recent amendments in Ontario labour laws also removed critical anti-scabbing provisions, which allowed employers to permanently replace striking workers. Concerning Alberta's labour legislation, he considered that the report of the Committee of Experts was self-explanatory in addressing Alberta's unreasonable definition of essential services. He referred to recent Canadian jurisprudence which, in finding that Canadian rural letter carriers were independent contractors and not employees, denied those letter carriers the legal guarantees of organizing and collective bargaining. In conclusion, he fully supported the Committee of Experts' comments and urged the Government to take the necessary measures to amend its legislation to bring it into full conformity with the Convention. He underscored that such measures would affect the welfare of all workers in North America.

The Worker member of South Africa initially emphasized the importance of the Convention as a full implementation of this Convention was a key measure of democracy and social justice. Expressing his support for the statements made by the Worker members, he noted with deep concern the fact that agricultural and domestic workers, who were some of the most vulnerable groups of workers, were excluded from the right to exercise their freedom of association. He added that Canadian agricultural workers included a large number of immigrants, who were in particular need of protection. He further noted that the denial of the right to strike of certain employees within public hospitals in Alberta stood in complete contrast with the long-standing practice of the Committee on Freedom of Association. He finally noted with concern the fact that teachers in Manitoba were also denied the right to strike. He strongly urged the federal Government of Canada to ensure that the pertinent domestic legislation be amended to conform with Convention No. 87.

The Worker member of Germany supported the statements made by the Worker members, stating that this case was of fundamental importance with respect to the principles enshrined in the Convention. He recalled that the Committee on Freedom of Association had examined a number of cases in this regard and that it had always expressed great concern regarding restrictions placed on the guarantees secured by the Convention. Commenting on the restrictions imposed on the right to strike by legislation in the Province of Alberta, he pointed out that the comments of the Committee of Experts made clear that no restrictions should be placed on the right to strike. In his view, the Government and the employers should therefore be asked to explain why categories of workers such as kitchen staff and gardeners in the health sector had been deprived of this right. He urged the Government to accept the comments of the Committee of Experts and take immediate steps to bring its legislation into conformity with the provisions of the Convention. Recalling the Employer members' comments on the right to strike in the general discussion and the references thereto today, he noted that many of these arguments were of a historical nature and indicated that the Committee of Experts had adopted an objective and systematic interpretation. Today, the Worker members were celebrating the 50th anniversary of Convention No. 98, just as 1998 had marked the 50th anniversary of Convention No. 87. The case before the Committee, which involved issues concerning freedom of association, collective bargaining and the right to strike, clearly demonstrated that these issues were relevant topics even for industrialized countries. He expressed his hope that Canada would set a positive example for other countries and immediately implement the principles enshrined in the Convention, otherwise the impression could arise that only developing countries were under special pressure to implement ILO Conventions.

The Government member of Australia noted that while certain legislation to which the Committee of Experts had referred appeared not to apply to some categories of workers, the Canadian Government had made the important point that those categories of workers remained free to form voluntary associations and to bargain collectively outside the formal statutory regime. In the Australian Government's view the Committee of Experts' report on the application of Convention No. 87 in Canada did not contain sufficient information that would enable all members of the Conference Committee to give consideration to the issues raised. A much more comprehensive exposition of the issues involved would be required for this Committee to properly consider the matter. He noted that the Committee of Experts' report necessarily contained no considered discussion of any information submitted to it by the Canadian Government and that the Committee of Experts had asked the Canadian Government to provide further information on some issues. In this context, rather than this Committee further examining this matter at this stage, he considered that it would be helpful if the Canadian Government be given the opportunity to present additional information to the Committee of Experts.

The Worker member of Finland, speaking on behalf of the Worker members of the Nordic countries, supported the statements made by the Worker members and the Worker member of Canada. He thanked the Government representative for the information provided. Noting that Canada had ratified the Convention No. 87 but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), he expressed interest in the Government representative's statement during the general discussion to the effect that

the Government firmly intended to continue the dialogue with the ILO concerning the possible ratification of Convention No. 98. He regretted, however, that such a developed and industrialized country had not been able to comply with the provisions of the Convention, particularly concerning the right to strike and the right to organize and negotiate collectively. He asserted that the violations of the Convention had become a persistent reality in Canada. Noting that some minor legislative amendments had been made in order to bring the Canada Labour Code into closer conformity with the principles of freedom of association, he expressed the hope that the Government would be able to report further positive developments in the near future. The Employer members' persistent questioning of the interpretation of the ILO supervisory bodies concerning the right to strike was raised with concern, as well as the fact that the Government also did not seem to accept such interpretation. He emphasized that the right to strike is a universal right tacitly inferred from the ILO Constitution and from the interpretation of Conventions Nos. 87 and 98 by the Committee of Experts and the Committee on Freedom of Association. The right to strike was recognized not only as a legitimate, but indeed as an *essential* means available to workers to defend their occupational interests. He was of the view that the interpretations of the ILO supervisory bodies were validly founded upon Articles 3, 8 and 10 of the Convention. He pointed out that, pursuant to Article 8 of the Convention, in exercising the rights under the Convention, the law of the land was to be respected; however, such laws should not impair the guarantees provided for in the Convention. With particular reference to the right to strike of the public sector in the Province of Alberta, he recalled that while a general ban on strikes was in contradiction with the Convention, certain restrictions were permitted including the case of essential services in the strict sense of the term, and public servants exercising authority in the name of the State. In conclusion, he asserted that in this context the law and practice in the Canadian Province of Alberta had not met the requirements set out in the Convention, as interpreted by the supervisory bodies, and called on the Government to take responsibility for what was taking place in the various provinces.

The Worker member of Zimbabwe recalled that the principle of the right to strike was derived from Article 10 of the Convention, which provides that worker organizations may act with a view to furthering and defending the interests of their members. This definition was of fundamental importance as it defined the purpose of such organizations. Furthermore, contrary to what the Employer members seem to believe, essential service workers were defined in the strict sense of the word in the *Digest of decisions and principles of the Committee on Freedom of Association*. Therefore, there could be no doubt that the kitchen workers, porters and gardeners, referred to in the Alberta Labour Code amendment, did not fall into this category of workers, although they worked in hospitals. Furthermore, the amendment of the New Brunswick Labour Code, which excluded certain categories of workers from protection, constituted a direct violation of the Convention. He, therefore, strongly urged the Government of Canada to take the necessary measures to amend this legislation in order to bring it into full conformity with the principle of freedom of association as observed by the Committee of Experts.

The Worker member of Greece declared that he was stunned by the length of the discussion which had gone on for two hours and which concerned the application of a fundamental Convention by an outstanding country such as Canada. With reference to the observations made by the Employer members, he noted that although States were free to choose the measures taken to implement the Convention, they were still under obligation to ensure compliance with the Convention. Furthermore, as regards the opposition between the right to strike and lockout he noted that in his country lockout had been prohibited since 1982 without any complaints from the employers. According to the speaker, equality between workers and employers could not be measured by the level of recognition of the right to strike or to lockout. One could only talk of equality once workers had acquired the same level of power as employers. Finally, he stressed that Canada should take every measure to ensure that its legislation be brought into conformity with the Convention in order, at the very least, to avoid the embarrassment of the present situation as well as the bad publicity arising from it.

The Government member of South Africa stated that his Government noted with concern the comments by the Committee of Experts in the case of Canada in relation to the Convention. Some five years ago his Government had tackled and resolved the very challenges that the Canadian Government had committed to tackle almost 27 years ago. The South African Government had also recognized that domestic and agricultural workers represented the most vulnerable groups of workers in its society and certainly this would also be true in the case of Canada. His Government urged the Canadian Government to bring its legislation and practice into line with this Convention as soon as possible.

The Government representative thanked all the participants in the debate for their contributions. He assured that each opinion expressed as well as the conclusions of the Committee would be transmitted to the relevant authorities in his country.

The Employer members stated that although they had not shared all the views expressed in discussion regarding freedom of association and collective bargaining, there was a general consensus on the subject and diverging opinions had been expressed only with respect to certain specific questions. Although a fundamental discussion on the right to strike should not be reopened, they noted that the *Digest of decisions and principles of the Committee on Freedom of Association* (CFA), which had been cited on various occasions, was merely a compilation of comments and observations made by the CFA. In this respect, they considered that the quotation of the *Digest* had become a self-generating element in discussions on the subject. With reference to the statement by a Worker member of Germany, according to which restrictions on the right to strike had constituted a restriction of a basic right, they were of the opinion that the term "basic right" needed to be defined first. In principle, the Employer members were not against the recognition of the right to take industrial action which included the right to strike and the right to lock-out. However, this right did not derive from the Convention. Recognizing the right to undertake industrial action, the question concerned the legal basis for the right to strike. For further details, reflecting the Employers' general position on the subject, they referred to the 1994 report of the Conference Committee (paragraphs 115 to 134). In conclusion, they emphasized that the Convention was not the legal basis for the right to strike. However, with a view to the divergencies between the Employer and Worker members' opinions on the subject, the Employer members emphasized that existing agreements on the Employer and Worker members' positions regarding most elements of freedom of association should also be pointed out, since the ILO and its member States attached great importance to freedom of association. Moreover, the Government should provide additional information with regard to measures taken in order to bring the legislation into conformity with the provisions of the Convention.

With reference to the observations by the Employer members, the Worker members recalled that all were aware of the differences of opinion between the two groups as regards the right to strike and, in particular, whether it should be included in the scope of freedom of association. Although the Worker members regretted that there had been no progress in this respect this year, they expressed the hope that the Employer members would continue to analyse the situation prevailing in different countries and, in particular, the interpretation of freedom of association given by these countries and what it represented and that the dialogue and exchange of views in this respect should continue within the Committee.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. The Committee noted with interest the information relating to the establishment of effective procedures for defining "essential workers" undertaken by the Newfoundland Government through tripartite consultations. While noting with interest recent legislative developments relating to the adoption of Bill C-19 amending the Canada Labour Code, the Committee observed that for a number of years the Committee of Experts and the Committee on Freedom of Association had been making comments on a number of issues relating to the application of the Convention. These issues included the excessive restrictions on the right of workers' organizations to formulate their programmes without undue interference from the public authorities resulting from federal and/or provincial legislation. The Committee further noted that labour relations legislation in some Provinces (Alberta, New Brunswick, Ontario) excluded a number of workers from their coverage, including workers in agriculture and horticulture or domestic workers, thereby denying them the protection provided with regard to the right to organize and to negotiate collectively. The present Committee, like the Committee of Experts, stressed that the guarantees provided under the Convention applied to all workers without distinction whatsoever, and that all workers should enjoy the right to establish and join organizations of their own choosing to further and defend their occupational interests. The Committee further stressed that workers' organizations should enjoy the right to formulate their programmes without interference from the public authorities. The Committee expressed the firm hope that the Government would supply a detailed report to the Committee of Experts on the concrete measures taken to bring its legislation and practice into full conformity with the Convention.

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PART ONE

Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards

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Swaziland (ratification: 1978). **A Government representative** thanked the ILO for the technical assistance it provided his Government which had resulted in the adoption of an amended Industrial Relations Act. He wanted to indicate at the outset that his Government had also taken steps to initiate social dialogue in the country, as had been urged by the Committee of Experts.

He recalled that the Committee of Experts had raised two questions in respect to the application of the Convention, in his country. The first concerned the right to organize of the prison staff in defence of their economic and social interests. The second concerned the dispute resolution procedures which accoring to the Committee of Experts were too long. The adoption of the amended Industrial Relations Act incorporating changes under sections 40(13) and 52 as a result of the technical assistance received from the ILO, had been noted with interest by the Committee of Experts.

In respect of the request of the Committee for the amendment of the legislation in order to decrease the length of compulsory dispute settlement procedures provided in sections 85 and 86, read with sections 70-82, of the Industrial Relations Act, he indicated that the purpose of the dispute settlement procedure was not to prohibit strikes, but to permit alternative resolution of the question before resorting to the ultimate measure of a strike. He recalled that no law was perfect and that these provisions were not engraved in stone. He hoped that this Committee, as well as the Committee of Experts, would appreciate the efforts his Government was making to conform to the requirements of the Convention. He requested the Office to assist the Governmen by providing a copy of the General Survery on Freedom of Association of 1994.

The Employer members stated that this case was a familiar one that the Committee had been discussing since the mid-1980s and every year since 1996. They indicated that there were three issues involved. The first concerned the lengthy procedure and complicated balloting requirement to hold a peaceful protest. The Committee of Experts had noted with interest the changes made in the Government's laws in both respects and requested reports on the practical application of section 40 of the Industrial Relations Act. In paragraph 113 of the General Part of the report, the Committee of Experts included Swaziland for Convention No. 87 in the list of cases of progress and this Committee should take note of that fact.

The second issue related to the denial of the right to organize prison staff. They indicated their agreement with the Committee of Experts that such prison staff could not legitimately be considered as part of the armed forces and thus were excluded by the law. The

Committee of Experts had also concluded that there could be restrictions on their right to strike. The Employer members noted this and indicated that this Committee did not have to deal with this question in its conclusions.

The third issue concerned the lengthy procedure required before there could be a legal strike. The Experts provided no procedural information on the process other than regarding its length.

The Employers' well-known view meant that these details relating to the right to strike could not be taken up in the conclusions to this case. Clearly, there was no one size fits all answer to this question. Since the last time the Committee discussed this case there had been some steps forward and the Committee could only be encouraged by these positive steps and urge the Government to keep them up.

The Worker members pointed out that Swaziland had ratified Convention No. 87 24 years ago. Given the serious violations noted regarding the exercise of the freedom of association, this case had been discussed by the Committee since 1996. It presented more specifically a problem regarding the unionization of prison workers. Despite the adoption of Act No. 8 of 2000, modifying many sections of the Act on labour relations, the limitations on the freedom of association and on the right to strike persisted. As such, prison workers did not enjoy the right to organize, which undermined the right to strike of this professional body. The adjusting of the Act regulating trade unions and prison workers was thus necessary, all the more so since this corporation contained particularities which required its personnel to be unionized.

The compulsory procedure prior to a strike had been qualified by the Committee of Experts as a particularly heavy procedure. This procedure was clearly in contradiction with Article 3 of the Convention and aimed to discourage all strikes. The probable objective was to silence trade unions, and in the long run, to make them disappear. A reduction in the length of the compulsory procedure prior to a strike thus was indispensable to ensure a better exercise of the fundamental public liberties that were the freedom of association and the right to strike. The Government thus had to proceed with amendments to legislation regarding the right to organize of prison workers and concerning the settlement of disputes so as to ensure the observance of the Convention and guarantee the freedom of expression of prison workers in particular and of trade unions in general.

The Worker member of Swaziland stated that the correctional service employees were still denied the right to form and join organizations of their choice for collective bargaining purposes. The strike procedure was still too long so that it effectively impeded this right, as it had been when the Committee had advised the Government to shorten the period in question. The civil liability clause still existed and remained a threat and an impediment to workers from addressing their socio-economic issues by way of protest action. In short, in the last year, the attempts made by both employers and workers to amend the law, within the Labour Advisory Board, were always undermined by the Government.

He recalled that Swaziland was appearing before the Committee for the seventh consecutive year for continuous violations of freedom of association, evidencing the obstinacy of the Government. As in the past, the Government had made a host of promises to the Committee that it had not kept. Tripartite advice to amend laws was ignored. On the contrary, the Government had arbitrarily come up with the 1996 Industrial Relations Act that had criminalized industrial relations. Having obtained the assistance of the technical team of the ILO, it failed to amend the Act to render it in conformity with the Conventions. The Government turned a deaf ear to advice that was given to it for several years not to use the emergency orders and decrees against workers and particularly the Public Order of 1963 and section 12 of the 1973 decree. No reports had been made by the Commission of Inquiry established to look into the death of a 16-year-old schoolgirl shot by the police during a peaceful demonstration of the SFTU and into the abduction of the Secretary-General of the SFTU. Despite the adoption of the Industrial Relations Act 2000 under the pressure of this Committee's special paragraphs and the possibility of loss of trade benefits under the United States system of preferences, several developments took place in the country. Mass meetings of workers were banned. Workers were detained and charged for leading peaceful demonstrations and brutalized for participating in them. They were denied the right to address press conferences and the right to present petitions. He stated that there could not be any workers' right without broader human rights and civil liberties and that neither could exist nor be sustainable without freedom of association.

The speaker considered that even though the Industrial Relations Act 2000 was largely in conformity with the Convention, it was null and void in the eyes of the authorities because it contradicted the provisions of the 1973 State of Emergency Decree that was the supreme law of the country. This view was confirmed by subsequent developments. The Government passed Decree No. 2 of 2001 that usurped all fundamental rights and was later repealed due to national and international outcry. The Government later introduced a bill to prevent head teachers in schools from joining the teachers' union. There was also a media council bill designed to muzzle the media and freedom of expression that was still under consideration. Before May this year the executive officer of his union was called and warned not to criticize the Government. Since then, the Government had published a new Internal Security Bill that proposed many draconian constraints and restrictions such as the prohibition of announcements of strikes, and characterizing strikes as economic sabotage. The improvements of the labour laws were simply reversed by other statutes. In effect this was like a situation of permanent state of emergency. Despite Swaziland's ratification of six of the eight ILO core Conventions, the African Charter and Peoples' Right, the African Union Constitutive Act, despite its membership of the United Nations, OAU and the Commonwealth, it was reverting to de-humanizing and archaic laws.

With a view to finding a lasting solution, he called for the ILO to send a tripartite high-level political mission to the country to meet with the authorities in order to impress upon them the urgency of amending the laws in question and of respecting the laws in practice.

The Worker member of South Africa stated that the context in which this case concerning Convention No. 87 was being discussed was set out in Chapter 2 of the Digest of Decisions of the Committee on Freedom of Association. It was clearly stated in paragraph 33 of this Digest that the rights conferred upon workers and employers must be based upon civil liberties enunciated in the Universal Declaration of Human Rights, and the absence of these liberties removed all meaning from the concept of trade union rights. In paragraph 34, it was indicated that a system of democracy was fundamental for the exercise of trade union rights. Swaziland was far from being a democracy. The 1973 decree, which was still in force, banned political parties and had suspended the Bill of Rights contained in the independence Constitution. As a result, trade unions took up the role of fighting for human and trade union rights. If progress was said to have been made in labour legislation without any progress on civil liberties, this constituted no progress at all. Despite Article 8(2) of the Convention, which states that national law should not impair guarantees provided for in the Convention, the Government in Swaziland had been using security laws to do just that. The Internal Security Bill, which was intended for terrorists, severely crippled trade union activities and denied freedom of association.

He recalled that this case had been discussed in this Committee for several years. The Government had been promising the adoption of legislation that would be in conformity with the requirements of the Convention. The Committee had been pressing for the right to organize of the staff of correctional services, while recognizing the possible limitation of their right to strike. The Government had to give justifiable replies to the comments of the Committee of Experts. The Committee had also requested amendments to the legislation in respect to the grievance procedure before strikes. As a result, he considered that the Committee should remain seized of this case through a special paragraph.

The Worker member of Norway expressed solidarity with the trade unions of Swaziland and concern at their situation. The Nordic trade unions had been closely following the political and trade union situation in Swaziland and the behaviour of the Government for some time. She supported the proposal that a high-level political mission be sent to Swaziland as soon as possible to assist the Government to bring the legislation into compliance with the ILO's fundamental Conventions.

The Worker member of Senegal recalled that it was not the first time that the case of Swaziland had been examined by the Committee. Even so, the report of the Committee of Experts only reflected part of the situation. The system was clearly anti trade union and continued to track down trade union leaders, harassing them with judicial action for exercising their right to strike. This state of emergency under which all constitutional freedoms were suspended had existed since 1973 and was still in force. The only efforts made by the Government to amend the Act adopted in 2000 had been undertaken out of a fear of losing trade privileges, especially those relating to the general system of preferences. In violation of Article 3 of the Convention, the legislation in Swaziland contained a large number of restrictions, and particularly the exclusion of prison staff from a fundamental human right, namely the freedom to establish a trade union. The Committee of Experts had drawn attention to the fact that the Government had adopted measures which had removed the substance of Article 3 of the Convention and which denied trade union organizations their rights. There was no other way

to explain why peaceful protest action had been made subject to holding a ballot. The repressive powers provided for in Decree No. 2 had been repealed by Decree No. 3, which had however maintained the denial of bail for some offences. The current system attempted to control the SFTU in a more visible manner than in the past. The lengthy procedures preceding the calling of a strike had this implicit function. The Government was no longer able to hide its intention to dismantle trade union organizations. The case of Swaziland should be set out in a special paragraph of the Committee's report.

The Worker member of Japan recalled that, even though the case had been examined by the Committee on several occasions and the Government had adopted the recommendations made by the Committee, the civil liability clause still existed and remained a threat and impediment for workers to express their opinions without any restrictions. He emphasized that freedom of association was based on the right of expression which should be fully secured by the Government. He emphasized that there could be no trade union rights without the right to freedom of association, peaceful assembly and freedom of expression. Referring to the reports of Amnesty International, he noted that these rights remained restricted in Swaziland. Government action still threatened the independence of the judiciary and undermined court rulings, and there were a number of reports of torture and ill-treatment by the police.

He cited a number of concrete examples and asked the Government to provide detailed information on these cases to the Committee. He indicated that Mr. Mario Masuku, President of the People's United Democratic Movement, had been arrested once again on 4 October 2001. He had previously been arrested in November 2000 on charges of sedition and had been released under restrictive bail conditions, including the requirement to obtain the permission of the Commissioner of Police when he intended to address any public gathering and to obtain the permission of the High Court to travel abroad. He had required treatment in the hospital because of the poor prison conditions. He also cited the deaths of Edison Makhanya and Sisbusiso Jele, which had occurred within hours of their arrest by the police on 20 March 2001. These were only examples of many reports of torture or ill-treatment by the police.

On 19 October 2001, the police had broken up the news conference organized by members and affiliates of the Swaziland Democratic Alliance to protest against the detention of the opposition leader, Mario Masuku. Several journalists had also been harassed by the police because of their work and a number of publications had been banned. The Government had also threatened to reintroduce a Media Council Bill to tighten restrictions on journalists and publications.

He called upon the Government to give effect in law and practice to the promises that it had made in this Committee. The duty of the Government was not to avoid being criticized, but to take direct steps to build a democratic country in cooperation with the trade unions. He also hoped that the Government would stop antagonizing the trade union movement and would accept the ILO tripartite delegation, which would assist the social partners to engage in dialogue with a view to finding solutions to the human rights problems in Swaziland.

The Worker member of Côte d'Ivoire stated that the case of Swaziland was of prime importance because it dealt with freedom of association, which was the cornerstone of trade union rights, and the concomitant right to strike. Freedom of association and the exercise of the right to strike were inextricably linked, and were among the fundamental public freedoms that each State had to guarantee. The situation in Swaziland was symptomatic of that prevailing in a number of countries, especially in Africa. It was part of a logic intended to silence trade unions and their claims. But Article 2 of the Convention was clear, and unequivocal. This Article provided that all occupational sectors, without exception, had the right to organize. The militarization of some occupational categories had the sole aim of preventing them from establishing trade unions and making their claims. The legislation in Swaziland should therefore be amended to allow prison staff to organize.

With respect to Article 3 of the Convention, the compulsory dispute settlement procedure provided for in sections 85 and 86, in relation to sections 70 to 82 of the Industrial Relations Act was outdated and dangerous for trade unions. It was in direct violation of the provisions of Article 3 of the Convention and threatened trade union action by making it difficult, or even impossible to call a strike These procedures were a violation of freedom and the Convention, and were an obstacle to trade union action. They should be withdrawn. Several States had such procedures, which denied the right of workers to strike, even though this was the only weapon they could use. Furthermore, heavy sanctions were imposed in the event of non-observance of these procedures, which further aggravated the situation. The Committee had been discussing the case of Swaziland for seven years and should support the position of the Worker members and of the Worker member of Swaziland.

The Worker member of the United States expressed the solidarity of AFL-CIO with the workers of Swaziland and its deep concern about the deteriorating political situation in the country, particularly with regard to civil liberties, which undermined freedom of association. He indicated that AFL-CIO intended to renew its efforts to bring a GSP complaint against the Government of Swaziland because of the deteriorating political situation.

The Employer member of Swaziland indicated that it was clear from the discussion with respect to this case that Swaziland was in dire need of the continuation of social dialogue. The labour reforms that had occurred in Swaziland with the assistance of the ILO technical advisory team bore testimony to the power of this process. He emphasized that the employers had driven such dialogue and some of the gains that had been achieved were a result of their relentless efforts to promote dialogue between the social partners. He therefore called upon the ILO to continue assisting his country to accelerate the process of social dialogue, particularly at the national level. He also appealed to the other social partners to renew their commitment to the process. Finally, he expressed the conviction that, with the assistance of the ILO in promoting dialogue, his country would be able to report significant progress in the current year in addressing its problems.

The Government representative expressed his gratitude to all speakers for their statements in relation to the case. In view of the political content of some of these statements, he believed that it was important to provide some background on the political context in his country. He indicated that the Government had established a committee to draft the national Constitution in conformity with international standards. Referring to the Internal Security Bill, he emphasized that proposed legislation of this nature was an internal matter that did not call for discussion by the Committee. He added that the legislative process in his country allowed for a 30-day period following the publication of draft legislation in which views on the proposed texts could be made known.

He emphasized that it was misleading to suggest that his country was moving backwards. He added that it was important to follow due process before the ILO's supervisory bodies. The next step in the process would be for the Committee of Experts to analyse the information provided by the Government and to request any further information that was required. It would then be possible to consider the progress made. He reaffirmed the commitment of his Government to taking advice from the supervisory bodies and entering into discussions with the social partners at the national level with a view to taking the necessary action. He further emphasized that statements to the effect that workers were denied their essential freedoms in Swaziland were untrue. He affirmed that no one was in prison in Swaziland on account of trade union activities. Moreover, there had been many applications under the new legislation to establish new organizations. He reaffirmed the commitment of his country to conform with its international obligations. However, he believed that it would be premature in the process of dialogue with the supervisory bodies to send a high-level mission to his country at the present time.

The Worker members expressed their gratitude to the Government representative for his statement and the information provided. Swaziland had ratified the Convention 24 years ago and the case had been examined by the Committee on several occasions. Since 1996, the issue of the difficulties of application of the principle of freedom of association in Swaziland had been examined at every session of the Committee. Serious violations had been noted, which still persisted. The Worker members took note of the observation of the Committee of Experts and the adoption of Act No. 8 amending sections 29, 40 and 52 of the Industrial Relations Act of 2000. Restrictions on fundamental public freedoms existed in Swaziland with respect to freedom of association and the right to strike. In fact, the prison staff did not have the right to organize. The absolute nature of this restriction violated Article 2 of the Convention and severely restricted the right to strike of this occupational category. Amendments to the law governing the right to organize of this occupational category were required. The right to organize and the parallel right to strike needed to be freely exercised by prison staff.

With respect to protest action, it had to be noted that the mandatory procedure for the settlement of disputes prescribed in sections 85 and 86, read in conjunction with sections 70-82 of the Industrial Relations Act, was lengthy. The Committee of Experts referred to this procedure as "particularly lengthy". Such a procedure was in violation of Article 3 of the Convention and was intended to discourage all protest action. The direct consequence was the silencing of the trade unions, their inability to act and their disappearance in the long term, which was probably the desired result. Such regulations were not only unacceptable to the Worker mem-

bers on the basis of their convictions and their trade union commitment, but also in the light of internationally recognized fundamental human freedoms. This procedure was clearly in violation of the Convention. A reduction in the length of the compulsory procedure prior to protest action was required to improve the observance of the fundamental public freedom of association and the right to strike.

The legislation governing the right to organize of prison staff and the dispute settlement procedure had to be changed so as to comply with the Convention and respect the freedom of expression of prison staff and trade unions in general. In the event that the Government did not accept a high-level mission, the Committee's conclusions should be set out in a special paragraph of its report.

The Employer members appreciated the expression of good will and intention by the Government representative. They called upon the Government to take action to bring national law and practice into conformity with the Convention. However, if progress were not made, they warned that the Committee might have to look at the case differently next year. They also recalled that the Committee's discussion of the case needed to be based closely on the comments made by the Committee of Experts. If the Committee of Experts were to identify further issues in relation to this case, it could request additional information. They reminded the Government that it needed to take action to ensure that it achieved compliance with the Convention in both law and practice. A Convention could not just be applied through the adoption of appropriate laws, but measures also needed to be taken to ensure its application in practice. They urged the Government to take seriously any issues identified by the Committee of Experts in its analysis of the information provided and to follow the advice given. Although they would normally have considered a technical advisory mission to be premature at this stage, in view of the background to the present case they called upon the Government to give strong consideration to the proposal to send a technical assistance mission to the country. However, they believed that it would be premature on this occasion for the Committee to place its conclusions on this case in a special paragraph of its report, as suggested by the Worker members.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. It noted with interest the adoption of Act No. 8 of 2000, modifying sections 29, 40 and 52 of the Industrial Relations Act, 2000, which appeared to bring the legislation into greater conformity with the provisions of the Convention while, according to the Committee of Experts, certain problems with the application of the Convention remained. It also noted that a certain number of concerns had been raised during the discussion concerning the practical application of this legislation and requested the Government to provide the information requested by the Committee of Experts in this respect. The Committee further noted with concern the statements to the effect that a Bill on internal security had been drafted which would place serious restrictions on the right of workers' and employers' organizations to exercise their activities. It requested the Government to transmit a copy of this Bill to the Committee of Experts, and any other relevant information concerning developments in this respect, so that the Committee could examine the Bill's conformity with the provisions of the Convention at its next meeting. Recalling that respect for civil liberties was essential to the exercise of trade union rights, the Committee expressed the firm hope that it would be able to note a significant improvement in the application of this Convention in the near future, both in law and in practice. To this end, the Committee once again suggested that the Government consider the possibility of a high-level mission aimed at collecting information on the practical application of the Convention and contributing to a better implementation of the Convention.

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ILC, 95th Session, 2006, Report of the Committee on the Application of Standards, pp. 24 Part 2/14–24 Part 2/17 (Zimbabwe)

International Labour Conference

Provisional Record

Ninety-fifth Session, Geneva, 2006

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PART TWO

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

Contents

ZIMBABWE (ratification: 2003). The Government communicated the following written information.

The Government of Zimbabwe has been appearing before the Conference Committee on Application of Standards since 2002. In the previous four appearances, Convention No. 98 – Right to Organise and Collective Bargaining Convention, 1949, was used as the basis of the listing. This year, Convention No. 87 – Freedom of Association and the Protection of the Right to Organise, has been used as the basis of listing the Government of Zimbabwe. In all the previous appearances, the interventions from the Workers' group and indeed from the representatives of the European Union and its associated members focused on political issues of Zimbabwe which were not linked to the terms of the appearances. In addition, the conclusions of the Officers of the Committee were in all instances biased hence the contestation and rejection by the Government of Zimbabwe of the suggested direct contacts mission in 2005.

The Government of Zimbabwe is of the view that unless the International Labour Conference's Committee on Application of Standards' working methods are urgently revised, it runs the risk of gradually being transformed into a political platform for castigating and ridiculing developing countries which are perceived otherwise by the West. In the case of Zimbabwe, its former colonial power has, since 2000, internationalized the political differences between the two countries over the land issue. Workers' organizations, mainly from Europe, being coordinated by the International Confederation of Free Trade Unions (ICFTU) are working in cahoots with individuals in the Zimbabwe Congress of Trade Unions (ZCTU) who have an appetite for donor money to advance the political agenda of Zimbabwe's former colonial power at every session of the International Labour Conference (ILC) as well as in Zimbabwe.

The listing of Zimbabwe at this session of the ILC is premised on Convention No. 87 – Freedom of Association and the Protection of the Right to Organise. In the report of the Committee of Experts on the Application of Conventions and Recommendations on page 132, reference is made to individual cases which fall within the purview of the Committee on Freedom of Association (CFA). These cases were ably responded to by the Government and some were finalized by the CFA. In addition, the Public Order and Security Act (POSA) was cited. It is interesting to note that the majority of the cases cited on page 132 are the same cases which the Workers' group, ZCTU included, were making reference to during the previous appearances. These cases were dismissed by the Government as either unfounded or of a political nature. Some of the incidences covered in the cases are still to be finalized by the CFA due to lack of adequate information and in some instances, unconvincing arguments on the part of the complainant, in this case, ICFTU. The Committee of Experts noted that POSA does not apply to trade union activities or public gatherings which are not political. Surprisingly, it remains concerned that POSA "may be used in practice so as to impose sanctions on Trade Unionists for conducting a strike, protest, demonstration or other public gathering".

The Committee of Experts' fears are unfounded and it is unfortunate that its position was influenced by the incidences cited in Cases Nos. 2313 and 2365 which were examined by the CFA. As responded to by the Government, the cited incidences did not relate to trade union activities but rather political matters. It is common knowledge that certain individuals within the ZCTU are political and work in cahoots with the Movement for Democratic Change (MDC), the National Constitutional Assembly (a quasi-political organization) and the Crisis Coalition of Non-Governmental Organizations led by the current Secretary-General of the ZCTU. Their agenda is to topple the democratically elected Government of Zimbabwe at the instigation of the foreign powers which want a regime change in Zimbabwe. POSA is about protecting the sovereignty of Zimbabwe and its citizens. It has nothing to do with trade union activities pursued by an insignificant percentage of the population. Accordingly, POSA will remain intact notwithstanding the outcry which is associated with the trade union organizations with political inclinations. Legislation, similar to POSA, exists in several countries whose governments are mindful of their duties to protect their citizens against internal or external elements which are motivated to bring about disorder. Genuine trade unionists in Zimbabwe have no problems with POSA and no reasons to fear it as it does not apply to its meetings. It is only those who are promoting a foreign political agenda of regime change that are against POSA. POSA is not at cross-purpose with the Labour Act (28:01) which governs industrial relations in Zimbabwe.

In addition, before the Committee, **a Government representative** (Minister of Public Service, Labour and Social Welfare) recalled that the Conference Committee had discussed the application by his country of Convention No. 98 in four consecutive sessions between 2002 and 2005 and that the only difference this year was Zimbabwe's listing for discussion on the application of Convention No. 87. In his Government's view, the interventions in previous sessions had not focused on the issues arising from the application of Convention No. 98 and had shifted to a political discourse. Hence there was the perception by the Non-Aligned Movement (NAM) member States, especially the Africa group, that Zimbabwe's appearance on the case list was politically motivated. He urged the Committee to focus on matters falling within its competence and leave aside issues of a political nature. Turning to the comments of the Committee of Experts, the speaker stated that individual cases of workers dismissed taken up by the Committee of Experts and the Committee on Freedom of Association were trivial and political in nature. He questioned whether the Committee would really wish to examine workplace disputes, ordinarily handled by national dispute settlement machineries. Regarding the Public Order and Security Act (POSA), the speaker assured the Committee that the relevant Act was never meant to interfere with trade union activities. Instead, the POSA had been enacted with a view to dealing with the problem of terrorism and protecting Zimbabwe's sovereignty, order and peace. He recalled that POSA had

been adopted on the behest of governments who had urged his country to toughen its laws after the terrorist attacks of 2001. Issues pertaining to trade union activities were dealt with by the Labour Act, which was in full conformity with the requirements of Convention No. 87.

The Employer members recalled that the Conference Committee had discussed the application by Zimbabwe of Convention No. 98 on a number of occasions. They acknowledged that some progress had been made but pointed out that important issues had still to be resolved. Since it was the first time that the Committee discussed the case of Zimbabwe under Convention No. 87, it was important for the Government to understand what its obligations were under both Convention No. 87 and Convention No. 98. A key aspect of Convention No. 87 concerned the interdependence of civil liberties and trade union rights. According to the ILO supervisory bodies, restrictions on civil and political activities constituted serious inhibitions of freedom of association. Free and independent trade unions could only develop in an environment of freedom and respect of civil and political rights. In this context, the speaker made a reference to the case of Nicaragua, which was of major importance for the Employer members. Although they understood the Government's wish to separate the political issues from those arising under Convention No. 87, they maintained that the two were inseparable. The provisions of Convention No. 87 presupposed the right to freedom and security of person, the right to freedom of movement, the right to freedom of opinion and expression, as well as the right to freedom of assembly and association. This meant that trade union activities could not be restricted solely to trade union matters, since they were intertwined with political questions.

The Worker members expressed their regret about the fact that in its reply the Government had hardly touched on the concerns voiced by the Committee of Experts but had rather confined itself to general comments which had not responded to the latter's requests. In their view, there was no doubt that the Government of Zimbabwe engaged in gross and flagrant violations of fundamental human rights, including the right to freedom of association, despite the fact that it had ratified and hence undertaken to abide by the ILO Conventions on freedom of association. They stressed that Zimbabwe was not being discussed for a consecutive sixth year because of its land reform policy, its international status or geographical size, but merely because of its flagrant disregard of Convention No. 87. The Worker members drew the Committee's attention to the fact that the Government had often relied on the provisions of the POSA for the purpose of imposing a ban on gatherings, demonstrations and strikes and harassing trade union leaders. In support of their submissions, the Worker members presented to the Committee a number of refusals by the authorities to carry out public meetings and demonstrations. In one case where the request to commemorate women's day was granted, the restrictions imposed by the authorities included the prohibition of singing or shouting slogans, of explicitly or implicitly raising or discussing political issues, and a strict timetable for the event and the monitoring by security forces. In this context, the Worker members invited the Government to acknowledge the importance of the resolution adopted by the International Labour Conference in 1970, according to which "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated, in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights".

The Worker members also referred to the cases pending before the Committee on Freedom of Association as evidence of Zimbabwe's disrespect of trade union rights. They pointed to instances of arbitrary arrest and injury of trade unionists and trade union leaders (Case No. 2313), dismissal and deportation of South African trade unionists for participation in strike action (Case No. 2365), anti-trade union dismissal of the recently re-elected president of the Zimbabwean Congress of Trade Unions (ZCTU), Mr. Lovemore Matombo, and the withholding of owed payment (Case No. 2328), police raiding the headquarters of the ZCTU (Case No. 2184) and manhandling of its recently elected Secretary-General, Wellington Chibebe (Case No. 2238). In closing, the Worker members also brought to the attention of the Conference the recent case of deportation of foreign trade unionists who were invited to participate in the congress of the ZCTU.

The Government member of Cuba stated that Zimbabwe had been placed on the list of countries called upon to provide explanations to the Committee, and on each occasion the Government had provided explanations that were easily understood by all. In particular, when perusing the report of the Committee of Experts, it could be seen that this was a case relating to the application of the national legislation of a State, which was merely an internal matter of a sovereign State. Therefore, the Government of Zimbabwe should be trusted to give proper effect to the POSA without violating its international commitments deriving from Convention No. 87, particularly as the Government had guaranteed that the Act did not apply to trade union activities or public assemblies which were not of a political nature, as indicated in document D.12. For this reason it was necessary to be careful when noting the present case, in which an attempt was being made to relate the internal situation of a country to compliance with international labour standards, which was tantamount to taking a position on a subject that was not within the mandate of the Committee. What should be done was to offer ILO technical assistance and cooperation.

The Government member of Austria took the floor on behalf of the Governments of the Member States of the European Union; the Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia, and the Former Yugoslav Republic of Macedonia, the Country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina, as well as the EFTA countries Iceland and Norway, members of the European Economic Area, aligned themselves with this declaration. He stated that, in the light of the Government's reply to the observations of the Committee of Experts contained in document D.12, a reaction was warranted. He strongly rejected Zimbabwe's assertion that the comments made by European Union Members States in earlier sessions of the Conference Committee on the country's obligations under Convention No. 98 focused on political issues, not directly linked to the question falling within the Committee's mandate. Social and labour standards were inseparable from human rights issues and by their very nature "political". It was therefore absolutely legitimate for the members of the Conference Committee to refer to the human rights situation in a given country in general when examining its compliance with the labour standards under scrutiny. In the opinion of the European Union, the language employed by the Government in document D.12 was polemic, even insulting and detrimental to the authority and work of the ILO supervisory system and called for its further strengthening. The speaker noted however that the oral presentation by the Government representative was more moderate in its tone than in document D.12. Turning to the application by Zimbabwe of Convention No. 87, the European Union Member States endorsed the concerns expressed by the Committee of Experts concerning the implications for the freedom of assembly of the POSA, which provided for the prohibition of trade union public meetings and gatherings that were deemed not to be for "bona fide purposes", without at the same time stipulating specific criteria for the determination of what constituted "bona fide purposes", thus opening the door for arbitrary decisions. They emphasized that workers' organizations should be free to voice their opinions on political issues in the broad sense of the term and to express their views publicly on a government's economic and social policies. They endorsed the requests made by the Committee of Experts in relation to Zimbabwe's application of Convention No. 87.

The Government member of Canada expressed his delegation's concern that the Government used the POSA to deny the rights of trade unionists to conduct a strike, protest, demonstration or other public gathering. In addition, the Canadian Government had protested against the arrest and detention of leaders and members of the ZCTU and had made representations for the respect of the right of freedom of expression and assembly and freedom of association. In particular, Canada had called on the Government of Zimbabwe to refrain from violence or undue force against peaceful protestors. Moreover, it was disturbing to note the frequent prevention of international labour union representatives from entering the country to meet with national trade unions and the Government should facilitate international exchanges between labour union representatives. The speaker mentioned his country's support for the labour movement in Zimbabwe, including research on the informal economy. He concluded by encouraging the Tripartite Negotiation Forum talks between the Government, business and the ZCTU that resumed last year.

The Government member of Nigeria, speaking on behalf of the Africa group, stated that the request of the Africa group for regional balance in the representation of countries in the selection of cases, formulated in 2005, had been acknowledged. Turning to the case under discussion, the speaker recalled that in its report, the Committee of Experts had stated that section 24 of the POSA, which had been criticized for conferring to the authorities a discretionary power to prohibit public gatherings, did not apply to gatherings of members of professional, vocational or occupational bodies held for non-political purposes or bona fide trade union purposes. The Africa group appreciated the concerns of the Committee of Experts, but since this particular issue was currently pending before the Committee on Freedom of Association under Cases Nos. 2313 and 2365, the Conference Committee should not have taken up the same issue before the former body was given sufficient time to conclude its examination. The Africa group believed that the simultaneous examination of the case by two supervisory bodies was counter-productive, putting the country in a position of feeling haunted and harassed. Turning to the question of the manner in which trade unions should articulate their demands, the speaker supported the idea of a practice that favoured tripartism and social dialogue instead of the threatening and antagonizing practices of holding protests, demonstrations and strikes. She referred to the experience of her country, which, in an effort to overcome similar problems, had discovered the value of social dialogue. African trade unionists should learn from this experience that workers' rights were best safeguarded through negotiation. She called upon the Committee to drop the case from the list of individual cases and invited the Office to strengthen the capacity of the social partners so that they would engage in meaningful social dialogue.

The Government member of Namibia stated that the

Government of Zimbabwe had fully addressed the requests by the Committee of Experts. With respect to the POSA, its response had clearly shown that it did not limit or ban trade union activities. Noting his surprise at the inclusion of this case on the conference list, he called for more clarity and transparency in the methods in determining the list of individual cases, and for the discussions to avoid focusing on political issues.

The Government member of Kenya stated that the Government of Zimbabwe had responded to the issues raised, and pointed out that the situation in Zimbabwe was a particular mix of national and international politics. Given the close relationship between the ZCTU and the Movement for Democratic Change, the supervisory bodies should apply the principles of fairness and honesty and set aside cases where trade union activities were flavoured with politics.

The Government member of South Africa stated that this case was very general and lacked specific charges. He appealed to the Committee to separate political issues from trade union matters, since part of the problem was a trade union in Zimbabwe that was pursuing a political agenda. He also called on the Committee to grant its confidence to the Government of Zimbabwe in order to pursue the application of Convention No. 87 without the feeling of being harassed.

The Worker member of Zimbabwe stated that during the last five years the ZCTU had been harassed by the police and other security agencies, and in all cases of arrest the detained had been charged under the POSA, despite the fact that section 24 of the Act explicitly stated that trade unions were exempted from applying for permission to hold trade union meetings or processions. For the last five years the courts had ruled that the trade unions were innocent but the uniformed police continued to harass them. In order to be able to freely assemble for trade union activities, special permission was needed from the police, which very often was denied. He further expressed concern about the ruling of the Supreme Court that had overturned the legality of a strike for the very first time. Furthermore, during the 6th Congress held by the ZCTU, some of the invited guests were deported. The speaker pointed out that reforms regarding the prison services had not taken place, despite a Government majority in the parliament, and that civil servants remained without a collective bargaining framework. He concluded by stating that the situation in his country was confirmed in the observations of the Committee of Experts and that industrial relations and dispute settlement were now treated under POSA.

The Worker member of Germany stated that she was speaking as the Workers' spokesperson in the Committee on Freedom of Association. Whatever was discussed in the Committee on Freedom of Association with regard to specific cases was of utmost importance to the work of the present Committee.

The Government member of Nigeria raised a point of order claiming that the findings of the Committee on Freedom of Association were not the subject of discussion before the present Committee.

The Chairperson ruled on the point of order, that any kind of illustrative information was admissible before the Committee and requested the Worker member of Germany to restrict herself to providing such information.

The Worker member of Germany stated that the Committee on Freedom of Association had had to deal with the case of Zimbabwe only two weeks ago. Case No. 2365 concerned several trade union leaders who were in jail since 2004 without indication of reasons; with the dismissal of 56 workers of the Netone factory, who had participated in a strike because management had left the bargaining table; and the expulsion from Zimbabwe of a trade union delegation from South Africa. The case had been dealt with in the Committee for the third time. Since the Government had not yet answered the Committee's questions from June last year, two weeks ago the Committee had to deal with the Case without any reports from the Government. The case touched upon one of the most basic trade union rights concerning the defence of their economic and social rights – the right to strike.

In the case of the strike at the state telecommunications enterprise, Zimpost and TelOne, management had not paid the wage increases, to which it had been sentenced by a court of law. Management decided unilaterally to pay less than half of the wage increases decided by the court. The workers from TelOne approached the Minister in charge and the State Secretary, Karkoga Kasela, instructed management to find an out-of-court solution. Upon the management's refusal, the workers announced a strike, which began two weeks later, on 6 October 2004. On 12 October, some 25,000 workers (half of the workers of the post and telecommunications sector) joined the strike. On 21 October, the Government set up armed sentries in the major post and telecommunications offices throughout the country. The guards were used to intimidate the striking workers and local trade union leaders. One day before the beginning of this massive strike, the trade union leader Sikosana was arrested in Bulawayo, six further trade unionists were arrested in Gweru and only released after payment of a penalty. The speaker pointed out that the Committee on Freedom of Association had found that the arrest of trade unionists in this context, even briefly, was a fundamental violation of the right to freedom of association. The arrest of trade unionists in connection with their trade union activities related to the representation of their members constituted a serious interference into civil rights in general and in trade union rights. The present Government had only ratified Convention No. 87 in 2003. The question arose why the Government was not prepared to implement Convention No. 87.

Law and practice were, unfortunately, further than ever from being in accord with Convention No. 87. The Government should do all to implement the Convention, so that the workers of Zimbabwe and trade unionists could exercise their right of association without fear of repressive measures. She hoped that the Government would also be prepared to accept the offer of a direct contacts mission. This would be an important sign that the Government was prepared to cooperate with the ILO in the observance of Convention No. 87.

The Worker member of Brazil stated that the flagrant contradiction arising in the case of Zimbabwe was not between workers and the Government, but between a government of a poor and exploited African country and certain weighty superpowers which wished to continue to dominate and control the wealth of the planet. It exemplified the contrast between justice and injustice. For four consecutive years, the pretext for sanctioning Zimbabwe had been Convention No. 98. As had occurred the previous year, the report of the Committee of Experts clearly showed that there was no technical justification for Zimbabwe to appear on the list of the Conference Committee, although the pretext had changed, as the case now related to Convention No. 87. In reality, it was just a matter of finding a pretext to attempt to impose sanctions on Zimbabwe, which amounted to political interference that was totally beyond the principles of the ILO. She emphasized that the ILO could not let itself be taken over by the racial hatred of those who had upheld apartheid for centuries and who wished to continue dominating the land and wealth that belonged to the people of Zimbabwe. If it adopted this type of discrimination towards developing countries which were seeking to follow their own path, without respecting multilateral principles, the ILO would run the risk of becoming a political tool of the major powers which wished to impose their domination.

The Worker member of Nigeria stressed the solidarity between workers in different countries and between States. If his own and other African governments could live with strikes, they should encourage their sister government in Zimbabwe to do the same in the true spirit of sharing experiences. The speaker pointed out that the only job creation in Zimbabwe occurred in the informal sector and attempts by the ZCTU to organize them had been seriously hampered by the Government. This issue being at the heart of Convention No. 87, he called on the Government to stop interfering with the freedom of association, which was also detrimental to the prospect of social dialogue, and he asked the Government to fully respect the Convention and to engage in genuine social dialogue with the ZCTU.

The Worker member of Malaysia expressed his serious concern over the magnitude of the violations of Convention No. 87 and recalled that international trade union cooperation and solidarity were fundamental elements of the Convention. He recalled union-related workshops that had been broken up by the authorities. In this respect, he denounced the Government's deportation of international trade union delegations, including the General Secretary of COSATU, and urged the Government to immediately stop the repression of its own citizens and its interference against international trade union solidarity, to which the speaker himself had been exposed. He condemned the Government for its lack of respect for workers' rights and Convention No. 87.

The Worker member of South Africa noted that in most of Zimbabwe's neighbouring countries there was the freedom of association and the right to demonstrate. In her country, workers "toy-toyed" against everything they were unhappy about, a right enjoyed in most Southern African Development Community countries. She disagreed with the position of some government members that this case was a conspiracy by developed countries against Zimbabwe. This case was an unambiguous case of violation of Convention No. 87 and all countries should take a strong stand so that one day the workers in Zimbabwe could be free.

The Employer member of Zimbabwe stated that for the very first time the Government had instigated discussions with the social partners to bring about a turnaround in the economy. In his opinion, the present case stemmed from the Government's efforts to achieve macroeconomic stability. The Government had appeared several times before this Committee in connection with Convention No. 98 and this had resulted in certain steps to amend labour legislation, for which all social partners had to be complimented. However, the employers in Zimbabwe found the issues under discussion in this case too broad and distant from labour legislation. For example, the reference made to the POSA was connected to political issues. In addition, some cases referred to by the Committee of Experts dated back to 1997 while others were still pending either before the Committee on Freedom of Association or other authorities. The Zimbabwean employers did not feel comfortable to comment upon these pending cases. The speaker expressed his hope for stronger social dialogue which appeared to be developing through the tripartite Negotiating Forum and the National Economic Revival Council. He welcomed continued technical assistance from the ILO to facilitate the creation of an environment for business and investment to prosper and to create more wealth and employment.

The Government representative, in response to a comment by

the Worker member of Germany, indicated that no trade union leader had been imprisoned since 2004. He stated that while there existed the right to make a procession, the Government had also to protect private property and the rights of other persons. For this reason, the police in Zimbabwe prescribed conditions on ZCTU demonstrations, which were often violent. He stressed the efforts that had been made to address labour issues through last year's meeting with the social partners. It was hoped this dialogue would lead to the adoption of a protocol for the stabilization of income and prices. Regarding the postal workers who were dismissed, the speaker pointed out that the courts had upheld these dismissals, and this was the rule of law. This did not prevent a discussion of certain administrative matters for helping dismissed workers in this case, and the Government was willing to pursue such discussions. No specific fault could be found with Zimbabwean labour law, and even the ZCTU had hailed the Labour Act as progressive. The speaker maintained that, in his country, certain trade unions were agitating for the destabilization of the country and had an open political agenda. For example, permission had been given for a commemoration of occupational safety and health week, at which a senior official from his Ministry was to speak. Yet, the attendees all sported political T-shirts and caps, which was inappropriate for a trade union event. Demonstrations of this nature occurred as his delegation was about to depart for Geneva to attend the International Labour Conference, and the demonstrators hoped to gain international attention. As for the expulsion of foreign trade unionists from Zimbabwe, he pointed out that all countries had immigration laws which allowed sovereign States to determine who could enter their country. He concluded by stating that this was a politically motivated case. He hoped the issues in this case could be addressed through social dialogue and he welcomed any usual technical assistance from the ILO.

The Employer members expressed their appreciation for the reasoned tone in which the Government had addressed the issues in the present session. It was evident from the discussion that the Government did not understand the difference between protection of trade union rights by the Committee on Freedom of Association, the obligations under Convention No. 87, or the difference between Conventions Nos. 87 and 98. They recalled that the ratification of Convention No. 87 required law and practice to be brought into line with the Convention, including the protection of the civil liberties of workers' or employers' organizations. While the Government had engaged in social dialogue, this was not the same thing as freedom of association. Social dialogue was a means, however, through which the Government could solve the problem, with ILO technical assistance. They hoped the Government would accept technical assistance in this case.

The Worker members expressed their regret about the fact that a large number of African governments had supported the Government of Zimbabwe in its defiance of Convention No. 87. They declared they would not be intimidated and were resolved to continue their quest for the recognition of their inalienable fundamental freedoms, as enshrined in the African Charter of Human and People's Rights, which, in their view, was flagrantly betrayed by those members of the Committee that supported the Government of Zimbabwe. They also disassociated themselves from the Worker member of Brazil, whose assertions did not represent the trade union movement. The Worker members asserted their right to address all issues arising under Convention No. 87, explaining that these were directly linked to their ability to find work and ensure adequate working conditions. They recalled that in August 2001 three workers of the government-owned ZISCO Steel Company were shot dead during a strike calling for better working conditions and pay. Despite their repeated calls to President Mugabe to order an investigation into the deaths, no inquiry had been carried out up to the present day. The Worker members further condemned the Government for systematically "politicizing" all socio-economic issues legitimately raised by the ZCTU as well as for its systematic and abusive attacks on the ICFTU whenever it raised issues of fundamental rights. In their opinion, it would be an abdication of duty if the collective voice of labour remained silent in the face of violations. Every country had security laws, but not every country used these laws against legitimate trade union rights. They expressed the hope that the support demonstrated by the African countries for the Government of Zimbabwe was merely an act of public relations or diplomatic solidarity and that behind the scenes the same countries would encourage the Government to comply with the standards set out in Convention No. 87.

The Government representative stated that his Government had never turned down technical assistance from the ILO. It would not, however, accept a direct contacts mission. It would accept a strengthening of the Subregional Office in Harare.

Following a pause prior to the adoption of the conclusion, **the Workers members** wished to draw the Committee's attention to the unacceptable attitude of the Zimbabwean Government delegation – they had committed some intolerable verbal and physical aggression on certain Worker delegates and ILO staff. The Worker members demanded the Government's excuses for this behaviour, otherwise they would request the incident to be reflected in the *Provisional Record*.

Another Government representative stated that he was not familiar with any "incident" and he had no intention of apologizing to a purely vacuous intervention by the Workers.

The Committee noted the information provided by the Government representative and the debate that followed.

The Committee observed that the comments of the Committee of Experts referred to the use of the Public Order and Security Act (POSA) in the arrest of, and the placing of charges against, trade unionists and union officers by reason of their trade union activities, as well as the discretionary power granted to authorities to prohibit public meetings and to impose fines or imprisonment in case of violations of any such prohibitions. The Committee also noted that the Committee on Freedom of Association examined several complaints against the Government regarding these serious issues.

The Committee noted in the Government's statement that the cases of the Committee on Freedom of Association that had been referred to by the Committee of Experts were not new and concerned small and trivial matters and that they had not been raised by the social partners with the Government. It further noted in the Government's statement that the POSA did not apply to the exercise of legitimate trade union activities. Trade union meetings that did not have a political purpose could take place without interference.

The Committee also noted with concern, however, the information provided concerning the situation of trade unions in Zimbabwe, the abusive use of the POSA to ban public demonstrations and the barring of entry into the country of certain international trade unionists.

The Committee requested the Government to take measures to ensure that the POSA was not used to impede the right of workers' organizations to exercise their activities, or to hold meetings and public protests relating to government economic and social policy. The Committee emphasized that the exercise of trade union rights was intrinsically linked to the assurance of full guarantees of basic civil liberties, including the rights to express opinions freely, and to hold assemblies and public meetings. Like the Committee of Experts, the Committee recalled that the development of the trade union movement and the acceptance of its ever-increasing recognition as a social partner in its own right meant that workers' organizations must be able to express their opinions on political issues in the broad sense of the term and, in particular, that they may publicly express their views on the Government's economic and social policy. The Committee insisted that no trade unionist should be arrested or charged for legitimate trade union activities. The Committee requested the Government to consider accepting a high-level technical assistance mission from the Office aimed at ensuring the full respect for freedom of association and basic civil liberties not only in law, but also in practice. The Committee expressed the firm hope that, in the very near future, it would be in a position to note concrete progress as regards observance of the rights embodied in the Convention and requested the Government to send a detailed report thereon in time for the next meeting of the Committee of Experts.

The Government representative refused to accept the conclusions in their present form. He reiterated that the high-level technical assistance mission emanating from the Conference Committee was not acceptable, rather the Government was willing to accept the usual technical cooperation. He further pointed out that his delegation was aware of the difference between a high-level technical assistance mission directed by the Committee and the usual technical assistance.

The Employer members affirmed that the Minister had accepted to receive enhanced technical assistance.

The Worker members concurred with the statement of the Employer members. Technical assistance had been accepted several times during the Committee's present session. The envisaged high-level technical cooperation would be carried out by the Office, and not by this Committee. They, therefore, felt that the conclusions were not out of context.

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PART TWO

PART TWO

THIRD ITEM ON THE AGENDA: INFORMATION AND REPORTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

Report of the Committee on the Application of Standards

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ZIMBABWE (ratification: 2003)

The Chairperson of the Committee invited the Government representatives to participate in the discussion. In addition, to confirm the absence of the delegation of Zimbabwe, which had been duly accredited and registered before the Conference, she referred to the working methods of the Committee. The refusal of a government to participate in the work of the Committee represented a considerable obstacle to the achievement of the main objectives of the International Labour Organization. For this reason, the Committee could discuss the substance of those cases regarding governments registered and present at the Conference who decided not to appear before the Committee. The discussion regarding such cases would be reflected in the appropriate part of the report, concerning both individual cases and the participation in the work of the Committee.

The Worker members indicated that the Government of Zimbabwe had embarked in a systematic and malicious spate of activities in violation of the Convention, including arrests, detentions, brutality and harassment of trade union leaders, activists and human rights defenders. Under the same government administration, Zimbabwe had once been a democracy and a food basket for the southern African region, with a strong currency, but had since allowed itself to degenerate into a despotic State that had let its economy run into the abyss through bad governance.

The Government's flagrant disregard for the Zimbabwean people manifested itself by discretionary denial of civil liberties through the constant use of the Criminal Law (Codification and Reform) Act of 2006 and the Public Order and Security Act (POSA) to regulate trade union activities. The Worker members reported that, regrettably, Mr Wellington Chibebe had been arrested for the second time, together with Mr Lovemore Matombo, the President of the Zimbabwe Congress of Trade Unions (ZCTU). They had been incarcerated in remand centres for 12 days and were currently out on bail. A request of the subregional ILO representative to visit them had been rejected. Both ZCTU members and ordinary workers had become victims of torture, arrests, victimization and displacement. In the rural areas, many teachers had been victimized and

brutally beaten in front of their pupils; 67 teachers had to be hospitalized, and Mr Raymond Mazongwe had been arrested and later released.

The Government should be reminded of the Resolution concerning trade union rights, adopted by the Conference in 1970, which pointed out that the absence of civil liberties such as those enunciated in the Universal Declaration of Human Rights removed all meaning from the concept of trade union rights. Similarly, the Committee on Freedom of Association had stated that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats against the leaders and members of the organizations, and that it was for governments to ensure that this principle was respected.

The Government of Zimbabwe had deliberately boycotted this Committee and perennially undermined its advice concerning trade union rights and civil liberties. The Worker members therefore called upon the Committee to strongly urge the Government to stop using the POSA in trade union affairs; to repeal the Criminal Law that criminalized trade union activities; to stop demanding prior authorization of trade union activities; to discontinue violence, harassment, detentions and brutality against both trade unionists and ordinary citizens; to withdraw all cases against trade union leaders; to compensate all victims of torture; allow displaced citizens to return peacefully to their homes; to resuscitate social dialogue and to apply the Convention in law and in practice. Finally, the Worker members wished to call for an ILO mission to the country and urged the Committee to include the conclusions in a special paragraph.

The Employer members stated that the Government of Zimbabwe continued to enact legislation that paralysed freedom of association, in particular the POSA, and to initiate criminal proceedings against trade union leaders participating in public demonstrations. The Government had also refused a high-level technical assistance mission of the ILO. However, by ratifying the Convention, the Government of Zimbabwe undertook international obligations to bring its law and practice into line with the Convention. This included the protection of civil liberties.

Regrettably, this was the second year that the Government had not appeared before the Committee, although it had participated in the discussions of the Committee this year. In accordance with the Committee's working methods, as revised at the present session, the discussion of this individual case would therefore be included in Part II of the Committee's report, and should also be mentioned in a special paragraph for continued failure to apply the Convention.

This case involved flagrant violations of the most basic elements of freedom of association. There was evidence of assaults, arrests, torture and police violence against trade union leaders. There was an absence of civil liberties, including freedom of speech, movement, association, assembly, as well as freedom and security of persons. This case was about a country that rejected human rights, including the most fundamental cornerstone of the ILO, freedom of association.

The Employer member of South Africa stated that the events in Zimbabwe were a tragedy. The atrocities and human suffering were beyond description. Workers were being denied rights and were persecuted for standing up for justice. The situation also affected employers. The Government's refusal to appear before the Committee was evidence for its disrespect for the ILO and its fundamental principles. Given the continuing violation of the Convention by the Government, it was time for introspection not only for Zimbabweans, but also for African and international leaders to use all appropriate means to avert further human suffering. Millions of workers had left the country and families were being split.

The Worker member of Zimbabwe stated that Convention No. 87, one of the pillars by which democracy was measured and tested, was under threat due to the Government's refusal to abide by the previous conclusions of the Conference Committee. The issue before the Committee was whether Zimbabwe had improved with respect to its observance and application of the Convention since the Committee's discussion in 2007. This was unfortunately not the case.

In 2007, the Committee had discussed the need for labour law reform to allow public servants to be part of mainstream unions, with the authority to negotiate their conditions of service by way of a National Employment Council. He noted with grave concern the Government's dithering on this distortion in the country's industrial relations which had been criticized by the Committee of Experts. Surprisingly, after the 2002 harmonization of the Public Service Act (PSA) with the Labour Act, the Government had reverted to the PSA in 2005 without consultation with relevant industrial relations stakeholders. Furthermore, prison service staff and the police were still not allowed to form trade unions.

The Worker member also recalled that the Labour Act was not in compliance with even the minimum international labour standards. Chapter 28:01, section 2A, merely referred to international labour standards, and the courts refused to apply them because the relevant Conventions had not been incorporated into domestic law. This was the essence of the problem faced by trade unions in their everyday struggle to protect their members.

The Zimbabwe Congress of Trade Unions (ZCTU) had suffered its fair share of brutality from the Government. The Government refused to learn from its previous acts and omissions. On 13 September 2006, a number of workers, among them ZCTU leaders, who had gathered to raise the authorities' awareness of the unbearable poverty levels and the need for access to anti-retroviral drugs, had met with the worst kind of police brutality. The torture they had gone through merely for expressing themselves was beyond any description. Arrests and detentions remained the norm.

After May Day commemorations organized by the ZCTU, on 8 May 2008, police had visited the homes of its leaders, including the speaker himself, and arrested them. They had been charged with "communicating falsehoods which where prejudicial to the State" and later released on bail, on condition that they made no political statements. However, it was impossible to know what exactly was considered political or non-political when dealing with issues in the workplace and at national level. ZCTU members had also suffered violence in the context of the 2008 elections, with civil servants and teachers having been targeted the most because they were thought to be opinion-makers in their communities. Yet, the ILO supervisory bodies had requested the Government to respect the right of workers to operate in a free and democratic environment.

Although the POSA was rarely being used at present, its place had been taken by the Criminal Law (Codification and Reform) Act of 2006. The Worker member stated that this Act had been used to infringe the right of the ZCTU and its affiliates to express their views on the Government's economic and social policy. He himself was due to stand trial under the Act on 23 June 2008.

The Government member of Slovenia spoke on behalf of the Governments of Member States of the European Union, and the candidate countries of Turkey, Croatia and The former Yugoslav Republic of Macedonia, the countries of the Stabilization and Association Process and the potential candidates Albania, Bosnia and Herzegovina, Montenegro, the EFTA countries Norway and Switzerland, as well as Ukraine, the Republic of Moldova and Armenia.

He deeply regretted that the Government of Zimbabwe once again refused to participate in the discussion of the Committee and urged the Government to resume its dialogue with the ILO immediately and to accept a high-level technical assistance mission of the ILO under the terms requested by the Committee in 2006. The deterioration of the situation relating to trade unions rights in Zimbabwe remained alarming. He shared the continuous concerns of the Committee of Experts with respect to the POSA. The Government should take all necessary measures to ensure that the POSA was no longer used to infringe the rights of workers and their organizations.

He further noted with great concern acts of anti-union discrimination and interference under the Criminal Law related to political activities of trade union members and agreed with the relevant findings of the Committee on Freedom of Association. The Government should drop all charges connected to trade union activities and abstain from measures of arrest and detention of trade union leaders or members for reasons connected with such activities. The Government was requested to provide full and detailed information with respect to the cases of Mr Matombo and Mr Chibebe.

He further stressed the interdependence between civil liberties and trade union rights. A truly free and independent trade union movement could only develop in a climate of respect for fundamental human rights. The Zimbabwean people had the right to enjoy freedom of expression without harassment, intimidation or violence and to live under the protection of the rule of law. He therefore urged the Government to restore full respect for the rule of law and take immediate steps to end the continuing human rights violations.

The Worker member of Botswana declared that the acts of violence in Zimbabwe were also targeting teachers, students and education communities. The Zimbabwe Teachers Association (ZIMTA) and the Progressive Teachers' Union of Zimbabwe (PTUZ) witnessed many acts of violence such as killings, torture and other forms of abuses against teachers in rural areas.

In the context of the national elections of 2008, teachers had been accused of influencing the vote as role models of their communities. In some areas, teachers had been told to vacate their schools or to relocate, while others had been threatened. Most violence had allegedly been perpetrated by war veterans and the youth militia. Some teachers had been arrested or abducted by the Central Intelligence Organization operatives. Furthermore, thousands of teachers had been prevented from voting in the first round because they had deliberately been deployed outside their voting wards as polling officers. This was a violation of the constitutional right of teachers to elect their political leaders.

The PTUZ had reported that at least 250 schools in 23 districts throughout the country had been affected by some forms of violence in the period between 3 and 9 May 2008. In some instances, teachers had been beaten in front of pupils and community members. Sixty-seven teachers had been hospitalized in Harare, Kotwa, Karoi, Rusape, Bonda, Howard, Guruve, Marondera and elsewhere; 139 teachers had to flee their schools and 213 teachers' houses had been looted. Many teachers had fled to neighbouring countries and were unlikely to return, worsening the brain drain in the education sector.

On 15 May 2008, Mr Raymond Majongwe, the General Secretary of the PTUZ, had again been briefly arrested by the police at the High Court of Zimbabwe where he had been attending a hearing of trade union leaders. His arrest had occurred following advertisements posted by the PTUZ deploring the fact that teachers were being beaten and harassed at their workplaces. Mr Raymond Majongwe had regularly been harassed and detained for voicing demands aimed at improving the crippled education system in Zimbabwe. On 6 October 2007, the police had intervened brutally to disperse a World Teachers' Day celebration, arrested Mr Majongwe and interrogated him for hours. Earlier, his passport had been seized to prevent him from leaving the country to attend an international trade union meeting. The acts of violence committed by the Government against teachers and trade unionists were to be condemned. The Zimbabwean authorities were urged to respect all human rights and trade union rights. Public Service International, Education International and the ILO should send special missions to Zimbabwe.

The Government member of the United States stated that her Government noted with profound regret that the Committee was discussing this extremely serious case without the participation of the Government of Zimbabwe. Her Government was deeply disturbed by the pervasive and systematic abuse of worker and human rights in Zimbabwe. The Government of Zimbabwe's unequivocal record regarding trade union rights, confirmed by both the Committee of Experts and the Committee on Freedom of Association, included obstruction, harassment, imprisonment, and reprisals, constituting massive, flagrant and defiant violations of Convention No. 87, freely ratified by Zimbabwe. Recent events demonstrated that respect for the rule of law in Zimbabwe continued to deteriorate.

Despite the fact that the offer of ILO assistance did not constitute a sanction but help which might have positive effects, the Government regrettably and persistently refused to accept an ILO high-level mission to deal with the ongoing violations of Convention No. 87. Regardless of whether it accepted a high-level mission, the Government of Zimbabwe had an immutable international obligation to implement the provisions of Convention No. 87 both in law and practice, and to report to the ILO on its actions in this regard. She hoped that the Government would reconsider its attitude towards the ILO supervisory system, but stressed that as a minimum it must urgently take the necessary steps to grant all citizens their fundamental worker and human rights.

The Worker member of the United Kingdom stated that on 13 September 2006, the ZCTU had planned a demonstration to protest against the high cost of living and high taxation and to demand anti-retroviral drugs for HIV sufferers. The notification under the POSA had been given to the police, which authorized the demonstration. Soon after the demonstration had begun, the leaders of the ZCTU and affiliated unions had been rounded up by the police and ordered to sit on the road. ZCTU leaders, including President Matombo, General Secretary Chibebe and Vice-President Lucia Matibenga had been taken to the Matapi police station. After having been subjected to severe and prolonged physical violence by police officers, they had been charged on the spot under the POSA with planning an illegal demonstration intended to overthrow a constitutionally elected Government.

The ZCTU leaders had suffered numerous injuries, including broken bones and lacerations during this incident, but had been denied medical assistance and access to lawyers for two days. On 15 September, they had been taken to a hospital. Nevertheless, only Mr Wellington Chibebe received treatment and only after the intervention of the ZCTU lawyers and a member of the non-governmental organization Doctors for Human Rights (DHR). Despite having suffered several serious injuries, he had only been operated on four days later and had been tried in secret on the hospital premises. The other colleagues, including Lucia Matibenga, Denis Chiwara, James Gumbi and George Nkiwane, had been returned to the police cells, without any treatment. They had been sent to court the next day and were granted bail. The court ruled that the beatings in the cells had to be investigated and the perpetrators brought to justice. However, since the police had been responsible for the investigation, almost two years after these horrific events, no charges had been brought against the officers who had

committed the torture, nor the senior officers who had ordered it.

The Worker member of the United States stated that the case was a testimony of the ZCTU fight against labour injustice and state tyranny. The Government had repressed a peaceful mass demonstration by ZCTU in September 2006. The atrocious detention, beatings and injuries inflicted on ZCTU leaders and members at the time were widely known. The President of Zimbabwe seemed to have thought that the truth could be covered up by refusing entry into Zimbabwe of a delegation of the Coalition of Black Trade Unionists, a constituency organization of the American Federation of Labor – Congress of Industrial Organizations (AFL–CIO). The AFL–CIO had already started distributing information on the repression of the ZCTU's demonstration.

The Government could not hide the truth when it came to de jure violations of the Convention. For example, the 2005 Labour Amendment Act denied public service employees the right to form and join trade unions, collectively bargain or strike. Authentic labour organizations were undermined by the legal recognition of so-called workers' committees. Moreover, the law impeded the right to strike by imposing a 50 per cent voting requirement, compulsory conciliation periods, compulsory two-week advance notice and unilateral referrals to compulsory arbitration. Employers had a legal right to permanently replace strikers, and individual strikers were liable for economic damages. The Government's definition of essential services was not in line with ILO jurisprudence, and illegal strikes could result in five years imprisonment upon conviction. Given these flagrant violations of the Convention, the Committee was urged to mention this case in a special paragraph of its report.

The Worker member of South Africa provided examples of the severe violations of trade union rights and harassment of trade union leaders in Zimbabwe. On 28 February 2008, the General Secretary of the ZCTU had applied for authorization to hold a Women's Day commemoration meeting on 8 March. The Government had not authorized the meeting and the ZCTU therefore had taken the matter to the court, which ruled in favour of the union.

For May Day this year, the ZCTU had applied for 34 venues, out of which five had been denied. The reasons for the refusal had not been given immediately in some cases, while in others the refusal had been notified on the day of the event. The ZCTU had had to cancel the commemoration events despite the fact that some workers had already gathered and that costs had already been incurred for the events.

The harassment and victimization of ZCTU leaders had further escalated on 6 May, when the police had gone to the houses of the ZCTU's General Secretary and President. The two leaders had been arrested, interrogated for more than six hours and charged with incitement to rise against the Government and with falsehoods because they had told workers that people were being killed during the current political violence. Bail had initially been refused on the ground that the two leaders were dangerous. It had later been granted, but under the unacceptable condition that they should not speak at any political gatherings. Their cases would be heard on 23 June 2008, and they were liable to a fine of level 14, imprisonment for a period of 20 years or both. Violence was the order of the day in Zimbabwe. Parents were being beaten in front of their children. People were fleeing to neighbouring countries. She expressed distress at the way the Zimbabwean authorities were treating trade unionists and requested that the charges against the two ZCTU leaders be dropped.

The Government member of Cuba stated that her interventions had always aimed at encouraging the governments to fulfil their obligations regarding both the submission of reports and the cooperation with the ILO supervisory bodies. In this case, the situation was not clear and the reason for the absence of the Government unknown. Consequently, increased efforts should be made to establish contacts with the Government of Zimbabwe. The defiance shown by the Government could be the effect of its dissatisfaction over the results achieved by the Committee. Her delegation did not support any decision regarding the application of measures or sanctions against any government before having exhausted the contacts and technical assistance required.

The Government member of Canada also speaking on behalf of the Government members of Australia and New Zealand, expressed profound concern about serious violations of freedom of association in Zimbabwe, which was essential to the existence of democratic society. He shared the view of the Committee that a truly free and independent trade union movement could only develop in a climate of respect for fundamental human rights. Failure to establish such a climate was among the root causes of the crisis in governance in Zimbabwe.

Following the general elections on 29 March 2008, trade union leaders, including the President of the ZCTU and its Secretary-General, Mr Lovemore Matombo and Mr Wellington Chibebe, and the Secretary-General of the Progressive Teachers' Union, Mr Raymond Majongwe, had been subjected to harassment and arrest. In Zimbabwe, trade unionists suffered serious infringements of their rights. They were subjected to politically motivated violence, killing, intimidation and harassment. In order to overcome the current political and economic crisis, the Government must ensure that social and political actors were given the space to defend workers' rights so that they could play a constructive role in resolving the crisis.

The POSA, despite amendments made, had been used to infringe the rights of workers' organizations. The Government was urged to ensure that trade unions were allowed to carry out their activities and exercise their rights guaranteed under the Convention, to restore full respect for the rule of law and to end human rights violations. Canada, Australia and New Zealand supported the work of the Committee of Experts, especially its effort to solicit further information and its suggestion that Zimbabwe receive a high-level technical assistance mission.

The Worker members pointed out that, while the Government of Zimbabwe advocated impunity, the workers called for dialogue; while the Government propagated violence, the workers called for peace; while the Government advocated injustice, the workers called for justice; and while the Government perpetuated brute force, the workers advocated the force of truth. Evidence of violence after the 2008 general elections was available on the Internet.

The Government of Cuba had supported sanctions against Apartheid in South Africa, but its position concerning Zimbabwe now seemed to be considered hypocritical. The Government of Zimbabwe was now taking people's identification documents away so that they could not obtain food rations or vote. It had also decided to prohibit non-governmental organizations from supplying food. Such desperate and inhuman measures must be discouraged.

The Worker members suggested that the Conference Committee take certain measures. First, the Committee should consider sending a tripartite high-level mission, composed of members of the Governing Body, to conduct inquiries and to assist the Government in finding solutions to the current problems. Second, the Committee should ask all Governments which had a diplomatic presence in Zimbabwe to observe the trial of Mr Chibebe and Mr Matombo, due to start on 23 June 2008. Their presence would serve as the eyes and ears of those who could not be there. The Worker members also called on the Government of Zimbabwe to take various measures. Social dialogue must be restored. The Criminal Law (Codification and Reform) Act must be repealed. All charges

against trade unionists must be withdrawn. It must be ensured that the POSA would not be used against trade unions. No victimization, harassment, detentions or arrests against trade unionists or citizens should take place. Victims of torture must be compensated. Those who had been displaced from their homes must be given other accommodation.

The Employer members endorsed the statement by the Worker members and their recommendations. This discussion marked a shameful day for Zimbabwe. The Government had lost its legitimacy and moral authority. It could have and should have accepted an ILO high-level mission, taken ILO advice on how to implement Convention No. 87, provided freedom of speech, guaranteed political freedom, ensured security, provided for a right of assembly, realized the right of association and protected basic civil liberties, but it would not have. The Employer members recalled that the most serious cases could be subject to a complaint under article 26 of the ILO Constitution. The Employer members urged the 147 other Members of the ILO which had ratified Convention No. 87 to join such a complaint against Zimbabwe and the Governing Body to approve a commission of inquiry provided for under this procedure.

The Government member of Cuba specified that the attitude of her Government with regard to apartheid could by no means be considered hypocritical. She recalled that the fight against apartheid, far from having been limited to mere statements, involved the sacrifice of many Cuban people. She reiterated that her Government would not support any decision regarding the application of measures or sanctions against any government before the contacts and technical assistance required had been exhausted.

Conclusions

The Committee deeply deplored the persistent obstructionist attitude demonstrated by the Government through its refusal to come before it in two consecutive years and thus seriously hamper the work of the ILO supervisory mechanisms to review the application of voluntarily ratified Conventions. The Committee recalled that the contempt shown by the Government to this Committee and the gravity of the violations observed had led this Committee to decide last year to mention this case in a special paragraph of its report and to call upon the Government to accept a high-level technical assistance mission.

The Committee further deplored the Government's refusal of the high-level technical assistance mission that the Committee had invited it to accept. The Committee observed with profound regret that the comments of the Committee of Experts referred to serious allegations of the violation of basic civil liberties, including the quasi-systematic arrest and detention of trade unionists following their participation in public demonstrations. In this regard, the Committee further regretted the continual recourse made by the Government to the Public Order and Security Act (POSA) and lately, to the Criminal Law (Codification and Reform) Act of 2006, in the arrest and detention of trade unionists for the exercise of their trade union activities, despite its calls upon the Government to cease such action. The Committee also observed that the Committee on Freedom of Association continued to examine numerous complaints regarding these serious matters.

The Committee took note with deep concern of the vast information presented to it concerning the surge in trade union rights and human rights violations in the country and the ongoing threats to trade unionists' physical safety. In particular, it deplored the recent arrests of Mr Lovemore Matombo and Mr Wellington Chibebe and the massive violence against teachers as well as the serious allegations of arrest and violent assault following the September 2006 demonstrations.

The Committee emphasized that trade union rights could only be exercised in a climate that was free from violence, pressure or threats of any kind. Moreover, these rights were intrinsically linked to the assurance of full guarantees of basic civil liberties, including freedom of speech, security of person, freedom of movement and freedom of assembly. It recalled that it was essential to their role as legitimate social partners that workers' and employers' organizations were able to express their opinions on political issues in the broad sense of the term and that they could publicly express their views on the Government's economic and social policy. The Committee therefore urged the Government to ensure all these basic civil liberties, to repeal the Criminal Law Act and to cease abusive recourse to the POSA. It called upon the Government immediately to halt all arrests, detentions, threats and harassment of trade union leaders and their members, drop all charges brought against them and ensure that they were appropriately compensated. It called upon all Governments with missions in the country to be present at the trial of Mr Matombo and Mr Chibebe and follow closely all developments in relation to their case.

The Committee urged the Government to cooperate fully in the future with the ILO supervisory bodies in accordance with the international obligations that it voluntarily assumed by its membership in the Organization.

The Committee firmly urged the Government to ensure for all workers and employers full respect for the civil liberties enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights without which freedom of association and trade union rights were void of any meaning. It urged the Government to accept a high-level, tripartite, special investigatory mission in this case of flagrant disregard for the most basic freedom of association rights. It urged the other governments that had ratified this Convention to give serious consideration to the submission of an article 26 complaint and called upon the Governing Body to approve a commission of inquiry.

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

The Worker members highlighted the exceptional statement of the Employer members on this case and expressed their thanks in this regard.

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PART TWO

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Contents

SWAZILAND (ratification: 1978)

A Government representative, Minister of Labour and Social Security, underlining the enduring value of freedom of association, protection of the right to organize and trade unionism, expressed unease at the selection of the case of the application of Convention No. 87 in Swaziland for examination by the Committee, given the steps taken by his Government to comply fully with ILO Conventions, mainly with ILO assistance. Nevertheless, it was a positive opportunity to share his country's progress on applying the Convention with the Committee. Referring to allegations made by the International Trade Union Confederation (ITUC) and the Swaziland Federation of Trade Unions (SFTU) of harassment, arrest and detention of trade union leaders who had participated in a march and the presentation of a petition, he denied any such action by his Government. The Secretary-General of the SFTU, Mr Sithole, had indeed been questioned by police, but his fundamental constitutional rights had not been violated, nor had those of his family. His Government did not believe in threatening and harassing people, least of all for exercising their trade union rights. He explained that Mr Sithole had been questioned in connection with insulting statements made against the King of Swaziland at a march held in Johannesburg, South Africa, on 16 August 2008. The statements were close to constituting a criminal offence, and he suggested that any person making or connected with such statements could expect to be questioned by the police. On 21 August 2008, Mr Sithole had voluntarily presented himself for questioning at Manzini Regional Police Headquarters, accompanied by two other trade unionists, after officers, only two of whom were armed, had visited his home to invite him to do so, which was common police practice. It should be noted that there was no allegation that Mr Sithole had been threatened with a firearm. He had left after being interviewed for less than an hour, and although an offence had been suspected, he had been neither harassed, arrested or detained. The police had simply done its duty to enforce the laws of the land and ensure that no double standards existed. It was not a violation of trade union rights to question someone in connection with any perceived violation of the law, provided that such questioning observed the principles of justice. He stressed the need for accusations to be accompanied by evidence to substantiate them.

He noted that issues had also arisen with regard to trade unionism in the prison and police services and the fact that some individuals had exercised their constitutional rights and brought legal proceedings against the Government. Although they had lost an appeal regarding the formation of trade unions, the judicial ruling handed down had suggested that the Government should consider amending certain laws. The Government would review all laws in order to bring them into line with the Constitution, and the Tripartite Drafting Committee's report on the Industrial Relations Amendment Bill had made some important proposals in that regard.

Turning to the allegation that the police had arrested several union leaders on their way to stage a peaceful protest action, thereby violating Convention No. 87, which Swaziland had ratified and incorporated into its domestic legislation, he expressed the view that the allegation was exaggerated. Swaziland had taken various legislative steps to ensure full compliance with international labour standards, including by monitoring and amending legislation as necessary, with ILO support. The allegation concerning serious violations of workers' rights during a peaceful and lawful strike by textile workers, including beatings and shootings with live ammunition, contained serious factual inaccuracies. Workers had not been shot at using live ammunition, and there was no evidence to support such a claim. The complaint also omitted to state that the originally peaceful strike had deteriorated into violence, particularly against non-striking workers and the police. He refuted claims that the strike had been stopped by police brutality, and that police officers had stolen medical reports and warned doctors against issuing medical reports without police permission, as there was no evidence and the police was not authorized to do so. In fact, the striking workers had taken an independent decision to end the strike, which had by then lasted around a month. Despite provocation, the police, some of whom had sustained injuries during the course of their duties, had maintained law and order by applying only minimum force where necessary. With regard to the allegation that an unidentified worker had been drowned by police, he underlined the public expectation that the police would operate within the law. Anyone with evidence to support this allegation should pursue justice through the courts. Several allegations made, concerning shootings and death threats, also lacked any evidence to substantiate them and unduly portrayed tyranny by the police. It had also been alleged that workers engaged in protected strike action had been dismissed, which automatically constituted unfair dismissal under Swaziland law and could be costly for employers. The Government did not support such dismissals.

He drew attention to the increasing tendency of peaceful socio-economic protests to become violent, which went against the spirit of Convention No. 87. Under section 40 of the Industrial Relations Act, workers not engaged in an essential service were entitled to take part in peaceful protests to promote their socio-economic interests, but many such actions were hijacked by political groups to pursue their own agenda, which was often at variance with those of the workers concerned. Violence towards police and the public during such events was increasingly frequent and threatened public order. In such circumstances, the police was expected to carry out its mandate. He gave several examples of marches and other demonstrations that had ended in violence, including one scheduled to coincide with national elections in September 2008. The Government had denied permission for the demonstration to be held on the grounds that it was purely political, but the workers had gone ahead with their pro-

test, seriously threatening the election process. Although the line between socio-economic and political matters was always thin, the protest in question had clearly been political in nature, as it had been aimed at regime change. It should also be noted that a demand for changes to the Constitution had already been tabled with the High-Level Steering Committee on Social Dialogue, in line with the recommendations of the ILO high-level mission to Swaziland in June 2006.

He emphasized that social dialogue had been welcomed in Swaziland, where much had been achieved in terms of its institutionalization. Lists of issues prepared by the social partners were discussed by committees within the structure. The Labour Advisory Board had recently reached agreement on the draft Industrial Relations Amendment Bill, and the proposed amendments covered most of the comments made by the ILO supervisory bodies. While he acknowledged that the process had taken time, that was only to be expected when tripartite consultation was involved. He outlined some of the proposed amendments, which demonstrated that the comments of the Committee of Experts and other bodies had been fully taken into account. In his view, the rights of workers received further support from the Constitution, the provisions of which prevailed over any other law. He reaffirmed his country's commitment to observing the letter and spirit of all the ILO Conventions it had ratified, both in law and in practice, and looked forward to further cooperation with and support from the ILO.

The Worker members expressed the view that the case of Swaziland should be considered in the light of previous observations by the Committee of Experts and the ILO high-level mission in 2006, as well as the continuous, deliberate, systematic and well-calculated violations perpetrated by the State through various legislative acts. Recalling previous discussion of the application by Swaziland of Convention No. 87 and the direct contacts mission of 1996, they said that persistent violations of the Convention had prompted the ILO to send a high-level mission to the country to review the impact of its Constitution on the rights of workers and to make suggestions for a meaningful framework for social dialogue in the light of steps already taken. The high-level mission had noted a number of laws that were interfering directly with the operation of trade unions and civil society in general and had requested the Government to keep it informed of the progress made in a number of areas. The mission had held meetings with interested parties at all levels, from the Prime Minister to civil society groups; however, neither the direct contacts mission nor the high-level mission had persuaded the Government to fulfil its obligations. They added said that the Government had claimed to have submitted a copy of the Media Council Bill to the ILO, but that it had not done so. The Bill placed statutory restrictions on the nomination of union candidates and their eligibility for office, in direct contradiction with the aims and objectives of Convention No. 87. In response to calls from the ILO supervisory bodies to amend certain sections of the Bill, the Government had asserted that it needed more time. With regard to provisions allowing employers to dismiss workers during a strike, the Government had claimed that they were intended to act as a deterrent for workers against flouting striking procedure before a strike. Many other laws contained similar provisions, but no action had been taken on the recommendations made by the high-level mission. Despite various ILO missions to Swaziland, the arrest, detention and brutalization of trade union members, human rights defenders and peaceful demonstrators continued. Workers engaged in lawful strikes in the textiles industry had been dismissed and protesters had been maliciously attacked, in clear violation of workers' rights. Swaziland had voluntarily ratified Convention No. 87 and was therefore obliged to recognize the trade union freedoms provided for therein, implementing the letter and spirit of the Convention in law and practice. They outlined various measures taken against trade unionists by the police, which demonstrated that no pluralism was accepted in Swaziland. The autocratic governance system was stifling civil society, including trade unions. Workers suspected that the Government of Swaziland was maliciously resisting the right to freedom of association by prison staff, denying them even the possibility of forming a trade union, in part because of acts committed against incarcerated trade unionists.

Expressing the view that decrees had always been used to circumvent the law-making process and only served the interests of the authorities, they affirmed that, if the practice were allowed to become a way of life, workers in Swaziland would never enjoy democratic values in their workplaces. The ILO had always encouraged its member States to engage in social dialogue in order to ensure that workers' rights were guaranteed. In that regard, they highlighted the punitive effects on Swaziland's workers of various acts and decrees that remained in force. In an echo of the country's colonial past, the police forced themselves into trade union meetings and conferences. In its current form, the Industrial Relations Act was divisive and unnecessary, particularly given that the Southern African Development Community was encouraging its members, which included Swaziland, to harmonize their laws with a view to comprehensive regional economic integration. They recalled that the Committee of Experts had duly noted the previous tripartite undertaking to establish a special consultative tripartite subcommittee within the framework of the High-Level Steering Committee on Social Dialogue, the purpose of which was to review the impact of the Constitution on the rights embodied in Convention No. 87 and to make recommendations to the competent authority to eliminate discrepancies between existing provisions and the Convention. This had been promulgated in October 2007, with notice given of the appointment of members of the Steering Committee. However, the initiative had failed to obtain any result. There was still no sign of commitment to a programme to review laws and, if anything, the situation was worsening. They emphasized that the Government of Swaziland did not exist in isolation, but had to coexist with its citizens. Arrest, detention and other forms of oppression and suppression did not present a good image of Swaziland. Its decrees contradicted peace-making, yet peace and social justice were at the foundation of the ILO and were the desire of all humanity. The Government of Swaziland seemed intent on continuing to inflict pain on its workers, throwing the concept of social dialogue out of the window. The establishment of a functioning tripartite structure and a subcommittee to examine the Constitution and the concept of constitutionalism was fundamental to ensuring genuine democracy in the world of work. They cautioned against referring to regime change in the context of sub-Saharan Africa, given the unfortunate connotations of the phrase. The basic rights of workers had nothing to do with regime change. The statements by the Government representative on several issues served only to support the workers' case against the actions of the Government, the police and other bodies. Trade unions had evidence of the arrest and torture of a number of individuals, but they raised the question of what action the Government would take. Even as the Committee continued its deliberations, the Government was preparing to approve new laws that would have a detrimental effect on workers' rights.

The Employer members were sceptical about the progress alleged by the Government of Swaziland. National legislation had basically remained unchanged since the first examination of the case in 1996, and the 50 per cent threshold for workers to organize did not constitute progress, since it was far too high. The present case consti-

tuted a seamless history of repression of free speech, police brutality and oppression. The Employer members expressed their disbelief in the Government's statement that the issues raised would be solved, and raised serious doubts as to the possibility that the situation could improve in the near future.

The Government member of Norway, speaking on behalf of the Government members of the Nordic countries, Denmark, Finland, Sweden and Norway, stated that the human rights situation in Swaziland, including the right to organize and to arrange and participate in legal strikes in accordance with Convention No. 87, was a long-standing case and had been discussed by this Committee several times. She took note of the allegations of repercussions on trade union activists and of the dismissal of workers who had taken part in lawful industrial action. She expressed concern that the ITUC had also reported serious acts of violence and brutality by the security forces against trade union activists and leaders. She called on the Government to respond to these allegations in detail. Her Government also noted that the Committee of Experts had once again highlighted the non-conformity of some of the laws with Convention No. 87. While the Committee of Experts had acknowledged that the Industrial Relations Amendment Bill had taken into account some of its comments, certain issues still remained unaddressed. Among others, the national legislation still did not provide for the right of workers to organize and to take lawful industrial action, as provided for in the Convention. She urged the Government of Swaziland to continue to make use of the technical assistance of the Office to bring the legislation into conformity with Convention No. 87 and to provide detailed information regarding the reported acts of violence against trade union activists and those who had participated in lawful and peaceful strikes.

The Worker member of Swaziland stated that, unfortunately, Swaziland was again listed among the countries violating Convention No. 87. For over ten years, the Government had been advised by the ILO not to use the 1963 Public Order Act and to repeal the 1973 State of Emergency Decree. However, the 1963 Act continued to be applied and the Government had stated that the contents of the 1973 Decree had been included in the new Constitution. As a result, the new Constitution, like the 1973 Decree, did not respect the doctrine of the separation of powers, banned political parties and provided for a very limited Bill of Rights. He referred to a number of examples of continued gross violations of the Convention by the Government, such as the arrest and detention of a number of textile workers, mostly women, who had participated in a legal strike, some of whom had been severely injured by the police; the detention and interrogation by the police of trade union leaders and other workers who had participated in marches in Sandton and Johannesburg to deliver a petition at the SADC Summit; the interception of workers by the police in a lawful demonstration in September 2008; and the interference by the police in other events organized by workers and arrests of activists. He added that certain political parties had been banned under the Suppression of Terrorism Act, and that a Bill on Public Servants was being prepared by the Government without consulting the tripartite Labour Advisory Board. In conclusion, he said that the system of governance in Swaziland was profoundly anti-democratic, economically unjust and socially discriminatory. The Government systematically evaded the only tool of conflict management, which was social dialogue accompanied by ILO technical assistance.

The Employer member of Swaziland indicated that the Tripartite Drafting Committee had completed its work, and that the Bill had recently been adopted by the Labour Advisory Board. All the issues raised by the Committee of Experts had been adequately addressed. With regard to the application of the Convention in practice, she indicated that she was not aware of any dismissal of workers engaged in lawful strikes, but if that were the case, the Swaziland Industrial Court was the competent authority to review such cases of violation and to effectively punish the employers found guilty of infringing workers' rights. She urged all members of her Federation to comply with the law in this respect. Generally speaking, employers were not always in favour of strikes because of their negative impact on the economy and business in general. A significant number of strikes and protests were due to reluctance to engage fully in social dialogue. While the Government of Swaziland was committed to social dialogue, progress was desperately slow, and the recently established infrastructures were not frequently utilized. However, in the context of the current economic meltdown, it was only through social dialogue that a country could forge a way forward.

The Worker member of South Africa recalled that the Committee of Experts had been examining this case for several years and that, despite the Government's commitment to achieve progress, the situation had not improved in practice. The adoption of the Industrial Relations Act in 2000 had appeared to be a positive step. However, the Government was still applying the state of emergency legislation, such as the Public Order Act of 1963 and section 12 of the Decree of 1973 on trade union rights, against workers and their organizations, thereby violating civil freedoms. Since 1973, the current Government of Swaziland had been ruling the country through the use of force, impunity, absence of social dialogue, lack of the rule of law, brutality against citizens engaged in peaceful demonstrations and failure to respect the judicial authorities. In May 2008, the Parliament of Swaziland had passed a controversial Act empowering the Prime Minister to declare virtually anyone or anything a terrorist activity. The Parliamentary elections of September 2008 had been declared by the Pan-African observation mission as infringing basic democratic rights, and a Commonwealth expert team had made recommendations for constitutional reform to ensure political pluralism. It would not be possible to note tangible progress until the Industrial Relations Act and the Terrorism Act were repealed, the arrests and detention of political and trade union leaders discontinued and the constitutional review enabling the people of Swaziland to democratically choose their Government undertaken and genuine, meaningful and result-oriented social dialogue aimed at achieving socio-economic justice, decent work and proper governance introduced. Trade union and political activists who feared for their lives were currently taking refuge in neighbouring South Africa. The case of Swaziland should therefore be mentioned in a special paragraph.

The Worker member of Botswana emphasized that the monarchy was circumventing the Bill of Rights enshrined in the Constitution by bringing back the 1973 State of Emergency Decree through the backdoor with the introduction of the Suppression of Terrorism Act of 2008. This Act removed all the fundamental rights guaranteed in the Constitution and the Universal Declaration of Human Rights which provided for the basic freedoms of opinion, expression, association, belief and conscience. He expressed surprise and dismay that Mario Nasuku and Thulani Naseko had been arrested. Mario Nasuku, the leader of the People's United Democratic Movement (PUDEMO), was facing charges in connection with terrorism, or alternately sedition. Thulani Naseko, a human rights lawyer, was alleged to have made seditious statements on May Day in 2009. Their arrest and that of others was a clear indication that there was no freedom of association and expression in Swaziland. Jan Sithole, Secretary-General of the Swaziland Federation of Trade Unions, was an example of a trade union activist who had been subjected to torture and harassment by the security forces. He condemned the arrests of Mario Nasuku and

Thulani Naseko and called for their immediate and unconditional release. He also called on the ILO to assist the Government with its legislative reform and emphasized that strike action was a way of exercising freedom of expression.

The Worker member of Senegal recalled that the case of Swaziland had been discussed several times by the Committee, and that both the Workers and the Employers had always emphasized the seriousness of this case. The comments of the Committee of Experts were still a matter of concern despite the severe conclusions adopted by the Conference Committee for many years. The Government had ratified the ILO Conventions, but always found ways to evade its obligations, and workers were still denied their basic right to organize in full freedom. In his view, the Government's silence in relation to the requests of the Committee of Experts demonstrated its desire to evade its obligations. He endorsed the regrets expressed by the Committee of Experts concerning the Government's persistent refusal to amend the legislation of 1973, which had established a state of emergency that had lasted for over 36 years and used public order as a pretext to suppress legitimate and peaceful strikes. The Government seemed to have forgotten the public social order and its responsibility to ensure the implementation of the Convention. He considered that the case needed to be classified as a continued failure to apply the Conventions on freedom of association. He recalled the extreme gravity of the situation in practice, as testified by Mr Sithole during a visit to Senegal. Such a situation merited the inclusion of the case in a special paragraph of the Committee's report.

The Worker member of Germany, speaking on behalf of the Worker members of the European Union, referred to the relations between the European Union and Swaziland, which were based on the Cotonou Agreement and the South African Development Community (SADC) Agreement. The EU high-level mission to the country in May 2009 had noted that the Human Rights Commission had still not been set up and that the Constitution had not yet been amended. The mission had also noted that freedom of assembly was not guaranteed, that the Terrorism Act was utilized to prohibit demonstrations by civil society, including trade unions, and that murders and torture of members of civil society were not prosecuted. She added that the Cotonou Agreement represented the give and take of development aid versus democracy and human rights. As illustrated above, Swaziland had not taken steps forward, but rather backward. The Worker members of the European Union expected the European Union to draw the obvious conclusions from the lack of noticeable progress in respect of democracy and human rights. This was not about stopping development aid for Swaziland. However, the European Union should demand that the Government of Swaziland respect its commitments under the Cotonou Agreement and implement the recommendations of the EU high-level mission.

The Government representative of Swaziland was encouraged by the constructive comments made by some of the members and wished to assure the Committee that all comments would be given due consideration. Since he had already covered most of the comments in his main statement, he refrained from repeating them. Although this was not the first time that Swaziland had appeared before the Committee concerning this Convention, he reiterated that this did not imply that nothing had been done in this regard. Significant progress had been made on legislative reform aimed at ensuring future compliance. In this regard, the Industrial Relations Act of 2000 had been amended several times since its promulgation and other amendments were under way. This had been achieved with the full participation of the social partners and the assistance provided by the ILO. With regard to social dialogue, the Kingdom of Swaziland had established a high-level national social dialogue committee consisting of cabinet ministers, legislators, members of the business community as well as workers. He wished to report to this Committee that Swaziland's tripartite partners had identified and agreed on the development of a Decent Work Country Programme and on a centralization of social dialogue to attain decent work objectives. Social dialogue was also to be used as the entry point for ILO technical assistance. The Government was committed to working with the social partners to achieve their national objectives and to improving the quality of life. ILO technical support was necessary to be able to complete the development of the social dialogue initiative that had been started in Swaziland. The proposed draft legislative amendments had been submitted to the ILO as per normal practice. The Ministry had set up a programme to have the drafts passed by the relevant legislative authorities and would report on progress to the Committee of Experts in November 2009.

The Worker members recalled that the Committee had decided in 2005 on a high-level mission to Swaziland, following which a Tripartite Agreement had been signed in 2007. However, not a single step had yet been taken to implement the Agreement and in the past two years the situation of trade unions and of all fundamental human rights, in particular under the provisions of the Terrorism Act, had worsened. There was no social dialogue in Swaziland and the Government needed to take effective steps to implement the 2007 Tripartite Agreement. The most immediate steps to be undertaken concerned the review of the Constitution to bring it into compliance with the provisions of Convention No. 87 and the issuing of recommendations to the relevant authorities to eliminate discrepancies in both law and practice with Conventions Nos 87 and 98, taking into account the comments of the ILO supervisory bodies. They asked to be kept informed of the progress of tripartite dialogue in the assessment of the Public Sector Bill and requested that the Government be asked to report back to the Governing Body in November 2009. They called for the repeal of the Terrorism Act. The Office had to offer technical cooperation to the Government of Swaziland in order to bring the Constitution as well as the Public Order Act of 1963, the Decree of 1973 and the Industrial Relations Act into line with ILO Conventions. Furthermore, they called on the Government to immediately and unconditionally release Mario Masuku and Thulani Maseko. The Government also needed to end the brutality directed against trade unionists and other human rights defenders, stop the violent suppression of peaceful rallies and civic actions, respect human rights and immediately act to end the impunity of those responsible for anti-union repression. In view of the long history of violations and the current situation, they called for this case to be included in a special paragraph. As all trade unionists from Swaziland present at the Conference risked becoming victims of persecution when returning to the country, they asked the Office to remain vigilant and to undertake measures to assure their safety and ongoing protection.

The Employer members noted the consensus within the Committee that there was a lack of social dialogue. In paragraph 62 of its report, the Committee of Experts had highlighted the need for technical assistance in this case. It was clear that technical assistance would be valuable, considering that the case had a long history with no progress. It was evident that since the first discussion of this case in 1996, the Government knew what needed to be done, yet had not done it. The Employer members agreed with the proposal by the Worker members that the conclusions of this case needed to be included in a special paragraph in order to highlight the need for the Government to finally implement Convention No. 87, including adhering to freedom of speech and social dialogue and preventing police repression. The Government needed

enact to promptly the necessary legislation to adequately address the issues identified by the Committee of Experts.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that took place thereafter.

The Committee observed that the comments of the Committee of Experts had referred for many years to the need to repeal the Decree/State of Emergency Proclamation and its implementing regulations and the Public Order Act, as well as to restrictions to the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and the right to organize their activities and programmes of action.

The Committee took note of the Government's detailed reply in relation to the allegations of arrest and detention of the Secretary-General of the Swaziland Federation of Trade Unions (SFTU). While the Government acknowledged that the police had called Mr Sithole to headquarters for questioning in relation to serious insults allegedly made in respect of the King in his presence, the Government representative insisted that this had nothing to do with his trade union activity and he had not been detained any further. The Government representative had provided further information in relation to the other allegations and, while admitting that some elements were true, he had stressed that there were also serious inaccuracies. He had also indicated that the request for change of the national Constitution had already been tabled with the High-level Steering Committee on Social Dialogue, as requested by the 2006 ILO high-level mission. He had further indicated that a draft law within the framework of the Labour Advisory Board amended some provisions objected to by the Committee of Experts and would be put before Parliament this year. Finally, the Government representative stressed that workers rights were fully guaranteed by the 2005 Constitution.

The Committee noted with concern the Government's reply to the allegations submitted by the International Trade Union Confederation (ITUC) to the Committee of Experts concerning the acts of violence carried out by the security forces and the detention of workers for exercising their right to strike, and felt itself obliged to recall the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press. The Committee stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threat or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties.

The Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years have yet to be adopted. The Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts were finally adopted.

Noting with concern that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months, the Committee, stressing the importance of social dialogue, particularly in these times of economic crisis, urged the Government to reactivate the Subcommittee as a matter of urgency. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act, and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Steering Committee on Social Dialogue, as well as in respect of other contested legislation and bills. The Committee offered the continuing technical assistance of the Office in regard to all the above matters. The Committee requested the Government to transmit a detailed report to the Committee of Experts for its meeting this year containing a timeline for resolution of all the pending questions. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

The Committee decided to include its conclusions in a special paragraph of its report.

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PART TWO

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Contents

SWAZILAND (ratification: 1978)

A Government representative, Minister of Labour and Social Security, said that his Government attached great importance to the work of the Conference Committee and the goals of the ILO and undertook to continue observing the letter and spirit of ratified ILO Conventions including Convention No. 87. He would seek to demonstrate that Swaziland had achieved significant progress towards compliance with international labour standards.

With respect to the Industrial Relations Act (IRA), the Government had published the Industrial Relations (Amendment) Bill and had tabled it in Parliament where it was currently under consideration. The Bill addressed several issues raised by the ILO high-level mission as well as the Committee in that it: (1) granted the right to organize to domestic workers by broadening the definition of "undertaking" (clause 2(1)(b)); (2) provided for the establishment of a minimum service in the event of strikes in sanitary services; (3) removed the statutory restrictions relating to the nomination of candidates and eligibility for union office (clause 3); (4) shortened the dispute settlement procedures (clauses 5 and 6); and (5) ensured that the Conciliation, Mediation and Arbitration Commission (CMAC) would only supervise strike ballots at the union's request (clause 6(b)).

With regard to the status of social dialogue, the Government representative announced that the National Steering Committee on Social Dialogue had been appointed and comprised the Minister of Labour and Social Security as the Chairperson, representatives from the two workers' and two employers' federations, as well as the Principal Secretary, Labour Commissioner and Legal Advisor of the Ministry. The Committee was fully operational and had agreed to a schedule of monthly meetings for 2010. In addition, the discussions on the Decent Work Country Programme had been concluded and the social partners intended to sign it shortly.

The Government representative vehemently denied the alleged indiscriminate use of the Public Order Act of 1963 to repress lawful and peaceful strikes. The Act did not apply to meetings of lawfully registered trade unions. In the event, however, that a meeting turned violent, police might intervene to maintain law and order. Its presence was essential to protect both the rights of persons participating in strike action and of innocent citizens. He also drew the Committee's attention to the appointment in September 2009 of the members of the Commission on Human Rights and Public Administration. This autonomous body, the mandate of which covered human rights

including workers' rights, had commenced its work. With reference to collective bargaining for prison staff, the Government had taken the decision to amend the Prisons' Act in line with the recommendation of the ILO high-level mission.

As to the practical application of section 40 of the IRA concerning civil and criminal liability of workers and their organizations, the Government representative believed that the provision did not impair the right to strike. However, strike and protest action became increasingly violent and destructive to private property. The Government not only had to ensure that workers freely enjoyed the right to strike but also to protect the rights of others. The worker groups should thus ensure that only their members took part in lawful strikes and instil a sense of responsibility in them. Regarding the repeal of the 1973 Decree/State of Emergency Proclamation (1973 Decree), he reiterated that the 2005 Constitution was the supreme law of the country. Finally, the Government representative reaffirmed that Swaziland was committed to complying with international labour standards and would continue to respect its reporting obligations.

The Worker members stated that Swaziland had a long tradition of trade union repression and that the case was therefore regularly discussed by the Committee. The previous year it had even been mentioned in a special paragraph. The facts were unfortunately familiar and, even if the Government's replies varied slightly, they did not contain much promise of improvement.

With regard to the facts of the matter, it was worth recalling that they involved acts of violence and brutality by the police against trade unionists and union demonstrations, threats of dismissal of union members who had gone on strike in the textiles sector and the summonsing and arrest of union leaders such as the General Secretary of the Swaziland Federation of Trade Unions (SFTU). Only recently, that very week, private houses had been raided and bombed.

In terms of legislation, the Committee had found on every occasion that it had discussed the case that the Government had not adopted the amendments that had been called for years, despite the technical assistance it had received from the ILO and the visit of a high-level mission in 2007. They reminded the Committee that the IRA needed to be amended, specifically on the following points: control over the appointment of union officials, supervision of votes on strike action, the ban on strikes in the health sector and the requirement that a trade union's membership comprise 50 per cent of the workers for it to be recognized. The Government had only very recently submitted to Parliament the amendments to the IRA to which the Labour Advisory Board (LAB) had agreed upon in 2009. There was therefore no guarantee that the new Act would be adopted and implemented in the near future. There were, moreover, several other laws that directly or indirectly undermined trade union activities: the 1973 Decree, which had supposedly been repealed by the new Constitution, which nevertheless contained the same provisions; the 1963 Public Order Act which had been used to suppress lawful strikes and peaceful demonstrations; the Police Act which had been used to arrest union officials and confiscate union property; the Prisons' Act prohibiting prison staff from forming trade unions; and, above all, the Suppression of Terrorism Act which served to justify measures taken against union activities.

Social dialogue was also a source of concern. The Government spoke of a high-level commission on social dialogue, but if the commission had ever existed it had been dissolved in 2009 and replaced by a much lower level committee composed of the social partners and only ministers of labour and charged with social affairs, which had not met for months. This wordless social dialogue illustrated the Government's approach to the subject, which involved announcing reforms and establishing committees without any actually happening in practice.

The Employer members recalled that this case had a long and disappointing history of failure to comply with the Convention. It had been the subject of 17 observations by the Committee of Experts and was being examined by the Conference Committee for the ninth time. With reference to their earlier intervention during the general discussion, the Employer members wished to emphasize that, in their view, Convention No. 87 neither provided for the right to strike nor guarantee certain forms of strike action. They could not therefore agree with the comments of the Committee of Experts in respect of recognizing the right to strike in sanitary services, ensuring that penalties imposed on strikers did not impair the right to strike and guaranteeing that workers might engage in sympathy strikes without incurring sanctions. They also noted that it would have been useful for the Committee's discussion to be able to consult the 2009 International Trade Union Confederation (ITUC) comments concerning the alleged detention of the General Secretary of the SFTU and the Government's reply.

The Employer members believed that there remained two fundamental issues in this case: (1) the continuing failure to adopt national legislation guaranteeing freedom of association and the protection of the right to organize; and (2) the failure to engage effectively in social dialogue. Regarding the first issue, the stark fact was that, more than 30 years after the ratification of the Convention and despite last year's mention of the case in a special paragraph of the Committee's report and ILO technical assistance, including the 2006 high-level mission, the Industrial Relations (Amendment) Bill had not yet been adopted. It was therefore difficult to remain anything other than highly sceptical that the legislation would finally be amended. Recalling that through ratification of the Convention the Government had committed itself to giving effect to Articles 2, 8 and 11, the Employer members stated that the Government should continue to avail itself of ILO technical assistance, in order to address as a matter of urgency all pending legislative issues mentioned in the observation of the Committee of Experts.

With regard to the second issue, noting that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months and in the absence of any information concerning a new lower level committee, the Employer members urged the Government to reinvigorate all efforts to engage in social dialogue without delay. The failure to do so up to now gave rise to serious doubts about the Government's will to comply with the requirements of the Convention, given the allegations of the continuing violations in this case of repression of freedom of speech, police brutality and oppression. When considering the report of the Committee of Experts, it was challenging to accept that there had been genuine progress. The Employer members therefore respectfully invited the Government to provide today: (1) a clear and unequivocal time frame for the adoption of national legislation giving effect to the Convention, in particular Articles 2, 8 and 11; and (2) a clear and unequivocal commitment to engage effectively in social dialogue.

The Worker member of Swaziland affirmed that the denial of freedom of association had reached deplorable levels in Swaziland and that the atmosphere had become so threatening and oppressive that workers died in their quest to associate and assemble freely. The lack of social dialogue was one of the key contributing factors to the social, political and economic challenges faced by the country. Despite the promise made by the Government at the 2009 discussion to convene the High-level Social Dia-

logue Committee to be chaired by the Deputy Prime Minister, the Government had done the opposite by dissolving the Committee in December 2009 and replacing it with a low-level committee to be chaired by the Minister of Labour and Social Security. Unlike the previous body, the current National Social Dialogue Committee had no budget, as the social partners were expected to bear the costs, and had not yet discussed any matter of importance, nor was any cluster committee in place. The arrangements were clearly intended to impede the Committee's work, given the Government's preference for a so-called smart partnership dialogue process which was not representative, but was fully funded. The above clearly demonstrated that the Government did not support social dialogue.

In relation to the amendment or repeal of inconsistent legislation, the Worker member indicated that the 2005 Constitution could not revoke the effects of the 1973 Decree, since the Constitution only nullified legislation that was inconsistent with its provisions. The Decree therefore clearly remained in force. Peaceful trade union protest actions continued to be violently disrupted under the guise of enforcing the Public Order Act or the Suppression of Terrorism Act. Unions remained civilly and criminally liable for any acts occurring during protest action under section 40 of the IRA. In this context, he contested that there had been any acts of violence initiated by workers during protest action. The Government had only submitted the Industrial Relations (Amendment) Bill to the LAB in May 2010, although the tripartite drafting process had been completed before June 2009, which proved the Government's claims of progress misleading. Moreover, he was not aware of any proceedings instituted to amend the Prisons' Act to grant correctional service employees the right to organize.

The Suppression of Terrorism Act was used to repress voices of dissent of trade unions and political parties. It defined the term "terrorist act" as any act or action that compelled the Government to do or refrain from doing something. Given the monitoring role of trade unions as to whether government actions were in the interest of workers, trade union actions could easily fall under this broad definition which covered both peaceful and violent means. The Act was used to suppress union activities under the guise of suppressing terror. The Workers' Day celebration on 1 May 2010 had been violently disrupted involving physical searches, confiscations and arrests. Mr Sipho Jele was charged under the Suppression of Terrorism Act and, after three days of custody, was reported to have hung himself in prison. Contrary to police instructions to bury him on the following day, the family had requested an independent autopsy. His burial on 15 May was brought to a halt by 400 armed police and at the funeral on 21 May the leader of the Peoples United Democratic Movement (PUDEMO) had been arrested. The Government had since instituted an inquest into the death of Mr Jele, which was, however, limited to the causes of death and did not cover the police conduct on 1 May. In November 2009, police officers had detained organizers of the Swaziland Transport and Allied Workers Union, confiscated membership forms and interrogated all union officers on the grounds of orders to prevent the unionization of public transport workers. The Worker member concluded that Swaziland had turned into a police State. The Government should be encouraged to remove urgently all obstacles to fundamental rights and freedoms.

An Employer member of Swaziland commended the Government for the significant progress made so far on the legislative amendments. The Industrial Relations (Amendment) Bill sought to recognize the right to organize of domestic workers and the right to strike in sanitary services, remove the statutory restrictions on the nomination of candidates and eligibility for union office, ensure that the CMAC could not supervise strike ballots unless requested to do so and shorten dispute settlement procedures. Although practical implementation was still a challenge, she was optimistic that the country had taken a step in the right direction.

It was regrettable that once again the application of this fundamental Convention by Swaziland was being discussed in the Committee. The issues raised in this case could have been easily resolved if the Government had been genuinely committed to the process of social dialogue. The Swaziland employers strongly believed in social dialogue, in particular in light of the difficult economic situation of the country, and appreciated the establishment of the National Steering Committee on Social Dialogue, which had scheduled monthly meetings to address key issues of concern to the social partners. She expressed disappointment at the slow pace of the social dialogue process and indicated that this issue had repeatedly been brought to the attention of the relevant authorities. While the Ministry of Labour and Social Security had displayed good will, this was not evident in other parts of the Government. As long as both social partners and the Government were committed to the process of social dialogue, progress on all pending issues of the case could be achieved. She therefore strongly recommended that an effective social dialogue framework be put in place as a matter of priority and looked forward to the non-inclusion of Swaziland in a special paragraph in the Committee's report.

Another Employer member of Swaziland saw a solution only in the process of constructive social dialogue and was committed to persuading the Government to deal with all the issues raised by the Committee. Requiring a stable and free political environment in which enterprises could operate, his organization was not involved in politics and aimed to undertake a moderating role. Meetings of the Steering Committee on Social Dialogue had commenced and the social partners had vowed to make it a success and he therefore emphasized that the case should not be included in a special paragraph of the Committee's report.

The Government member of Norway, speaking on behalf of the Government members of Denmark, Finland, Iceland, Norway and Sweden, noted with growing concern the continued negative developments of the human rights situation in Swaziland in general and the lack of compliance with the Convention in particular. She was further deeply concerned at the aggravated situation in relation to political opposition and trade unions in Swaziland, including freedom of expression, as well as the right to organize. Noting that the ITUC had reported "serious acts of violence and brutality of the security forces against trade union activities and union leaders in general", she deplored the death in custody of PUDEMO member Sipho Jele, who had been arrested on Workers' Day.

The Committee of Experts had once again highlighted several pieces of legislation because of their non-conformity with the Convention. While considering the steps taken to amend the legislation, she urged the Government to ensure that its legislation be fully compliant with the Convention. The human rights situation in the country, including the right of workers to organize and to arrange and participate in legal strikes in accordance with Convention No.87, was a long-lasting case and had been discussed in this Committee several times. She therefore urged the Government to continue to benefit from the technical assistance of the ILO in order to bring the legislation into compliance with Convention No. 87 and to ensure the effective enforcement of the legislation. She further urged the Government to provide detailed information regarding the reported acts of violence against

trade union activists and those participating in lawful and peaceful strikes.

The Worker member of South Africa regretted that Swaziland had become southern Africa's tragedy. South African workers had worked closely with Swazi trade unions in support of the struggles for workers' rights and democracy. It had become clear that there could be no meaningful freedom of association, social dialogue or improvement in the lives of workers without democracy. In the region, patience with the ever-deteriorating conditions in Swaziland was growing thinner and far more drastic steps were required to turn things around. The mysterious death of Mr Sipho Jele and the intensified ruthless persecution of workers and political activists pointed to a regime determined to intensify the harsh treatment of its people. The King's order for the strangling of opposition, targeting particularly activists of the Swaziland Youth Congress (SWAYOCO) and the PUDEMO, with its President Mario Masuku, had laid the basis for the current unacceptable levels of worker persecution. The Suppression of Terrorism Act, the Public Service Bill and a series of other laws confirmed the increased militarization of society, further limiting and worsening the possibilities for freedom of association. Army personnel were all around intimidating people. The persecution of political and workers' activists was a systematic attack on those people demanding democracy and social justice. The Swazi State had never felt as threatened and desperate. This was manifested in the increased attacks on workers and all those fighting for democracy and was similar to the tactics used by South Africa's Apartheid regime, which had also bombed and raided activists' homes. As Swaziland was permanently represented on the ILO's list of violators of Convention No. 87, decisive steps had to be taken to achieve the desired impact. She therefore: supported the call for an ILO high-level delegation whose findings should form the concrete basis for real progress; called for meaningful, genuine and lasting social dialogue that would help Swaziland out of the current quagmire; and also called for an independent inquiry into the death of Mr Sipho Jele and the behaviour of the Swazi security forces in relation to workers' activities.

The Worker member of Ghana observed that the environment for workers to exercise the right of freedom of association and protection of the right to organize, as enshrined in Convention No. 87, remained very bad. The Government had made little progress in ensuring and guaranteeing workers' rights in general despite, as observed by the Committee in 2009, the country benefiting from ILO technical assistance and high-level missions. This was compounded by the absence of a true pluralistic democratic environment in Swaziland and the suppression of freedom of choice. The repeal of the draconian 1973 Decree through the enactment of a new Constitution in 2005 had merely maintained the political status quo in force since 1973, giving executive, legislative and judicial powers to the King and setting a ban on political parties and meetings, including union meetings, as demonstrated in the brutal disruptions of the 2010 May Day celebrations by state security. Intimidation, arbitrary arrests and brutality against trade union activists had continued with impunity. Of particular concern was the use of state security to intimidate and harass workers and trade union leaders, which had instilled awe and insecurity in workers and the wider society and undermined the very essence of freedom of association.

The enactment of the Suppression of Terrorism Act had further worsened the environment for exercising the rights enshrined in the Convention. Based on this Act, the Government had started categorizing actions of workers, trade union associations, political activists and civil society at large as acts of terrorism. Such criminalization of trade union and workers' activities was not acceptable as it violated fundamental workers' rights and to the contrary of the Government's assertions, social dialogue in its true sense did not exist.

There could be no meaningful progress in respect of workers' rights in particular as they related to Convention No. 87 as long as the Government denied its citizens, including the workers, a democratic environment and space and continued to apply repressive legislation. The recent amendment of some pieces of legislation, as brought forward by the Government, was not enough, but merely cosmetic, as the practice on the ground showed that little or no improvement at all had been achieved.

Taking into account that freedom of association was particularly important to attain the ILO's objectives, he strongly urged the Government to work with the social partners and other stakeholders swiftly towards removing all repressive pieces of legislation, including the Suppression of Terrorism Act, and to create a true democratic environment enabling the exercise of the right to freedom of association.

The Government member of Mozambique, speaking on behalf of the Government members of the Committee, Member States of the Southern African Development Community (SADC), endorsed the report and Swaziland's commitment to apply and respect all ratified ILO Conventions, and notably Convention No. 87. Considering the observations of the Committee of Experts, the SADC countries felt that the steps currently being taken, to which the Employer members had referred, were pointing in the right direction. The meeting of Ministers of Labour and the social partners of the SADC countries had welcomed the fact that all the ILO's fundamental Conventions had now been ratified. The members of the SADC were endeavouring to ensure the implementation of the Conventions.

The Worker member of the United States emphasized that, since 1997, Swaziland had been reviewed in relation to Convention No. 87 on numerous occasions and the case had been included in a special paragraph of the Committee's report on several occasions, including in 2009. The Committee of Experts had explicitly called for authentic results to be produced at the 2010 session of the Conference Committee, in particular: (1) abrogating the 1973 Decree, which had been used to destroy the exercise of the right of workers to freedom of association; (2) amending the 1963 Public Order Act to avoid it being used to proscribe peaceful strikes; (3) amending the Prisons' Act to grant trade union rights to prison staff; and (4) overhauling those civil and criminal liability provisions of the IRA imposed on trade union leaders for having exercised their right to coordinate peaceful strike action. It was unfortunate that in this case the Employer members did not recognize the irrefutable jurisprudence of the ILO supervisory bodies stating that the right to strike was also at the heart of Convention No. 87.

In 2009, the Committee had called upon the Government to "transmit a detailed report to the Committee of Experts" for its 2009 session, containing a "time-line for resolution" of all pending questions. Since the Government had not implemented any of the requests made and even the Bill to amend parts of the IRA remained a Bill, the Government had once again acted in contempt of the ILO supervisory system's conclusions. The Government continued to use devices such as the 1973 Decree and the Public Order Act to victimize the SFTU through police harassment and arrests, as well as to justify death threats to Mr Jan Sithole's family. These devices had also been used to bust legitimate trade union activity in Swaziland's critical textile sector, which was dominated by Taiwanese companies. In March 2008, the police had conducted a

crackdown on a strike of thousands of textile workers with tear gas and gunshots.

This was most regrettable as the Government, even in the midst of the great global recession, could easily start overhauling the legislative and executive measures used to justify the arrest, beating, imprisonment and terrorization of Swazi trade unionists, especially in the textile and apparel sectors. It could also easily start complying with all requests made by the ILO supervisory bodies over the last decade. Compliance would be beneficial since trade and market access policies implemented by the United States, such as the African Growth and Opportunity Act, rewarded the observance of core labour standards, including freedom of association. While hoping that the Government would take serious steps to advance both the principle of decent work and those principles enshrined in Convention No. 87, he requested that the conclusions of the Committee be included in a special paragraph of the Committee's report and that a high-level tripartite mission be conducted.

The Worker member of the United Kingdom had been surprised when, in 2009, he had heard the Employer members' recollection that since 1997 the Government representative had repeatedly stated that legislation was being changed, the situation was improving and Swaziland would soon be compliant. The only change, however, had been a change for the worse, as shown by the adoption of the new law to remove the right to bail for anyone arrested for participating in protests. Therefore, the Government's statement had to be taken with a high degree of scepticism, as could be seen when the current discussion was put in a historical context. Swaziland had gained independence and, as was hoped, genuine freedom for its people in 1968 with the establishment of a constitutional monarchy. However, in 1973 the then governing party had effectively ceded absolute power back to the King and established a long-lasting state of emergency which, despite the hope invested in the 2005 Constitution, effectively remained in place today. Swaziland had become a member of the ILO in 1975 and had ratified numerous Conventions without, however, complying with the requirements of several of them, in particular Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

With political parties banned, trade unions had continued to play an essential role in representing the interests of ordinary Swazi citizens. Recalling the repressions enumerated by other speakers, he added that recently suspicious burglaries and thefts of computer equipment from union leaders' homes and a bomb attack on the house of Mr Alex Langwenya had taken place. While the culprits were unknown, the fact that the police had arrived minutes after the bomb attack and arrested Mr Langwenya himself was not very reassuring. One of the most recent violations had taken place on May Day 2010 when a trade unions festivity at the Salesian sports ground had been raided by the police based on the Suppression of Terrorism Act. Searching for people wearing T-shirts of banned organizations, many gatherers, including guest speakers, had been arrested by the police, partly even violently. The head of the Swazi Consumers' Association had been arrested on the ground that he was not a worker. Most of those arrested had later been released, but nothing had been heard of union member Sipho Jele, whose family had been interrogated for four hours without being told of his whereabouts. On 4 May 2010 his body had been released and it had been stated that he had hung himself from the rafters of the prison toilet and that he had had to be buried immediately. Very few people believed that he had killed himself. In light of the comments of the Committee of Experts, and taking into consideration the statements made by the Government representative, he emphasized that all those, like Mr Sipho Jele, who were fighting in Swaziland for their most basic rights should see that the ILO could take action that would lead to real change.

The Government member of South Africa aligned himself with the statement made by the Government member of Mozambique, who had spoken on behalf of the Government members of the SADC countries, and expressed his condolences to Mr Jele's family. He welcomed the report of the Committee of Experts and offered his country's assistance in promoting social dialogue in Swaziland, as dialogue had been key to his own country's success. He further welcomed the Government's commitment to working with the Committee and urged the ILO to support the promotion of meaningful and sustainable social dialogue in Swaziland.

The Worker member of Germany, speaking on behalf of the European trade unions, observed that Swaziland had been in a state of emergency for 35 years. All powers were vested in the King, and opposition parties and gatherings were prohibited. The population, of which 70 per cent lived below the poverty line, suffered most. The violation of trade union rights in the country had been included in a special paragraph of the Committee's 2009 report. Despite the Government's promises, the situation of trade unionists and worker representatives had not at all improved. Trade union rights had been curtailed and trade unionists engaged in the promotion of democracy and pluralism were persecuted, threatened and often had to pay for their commitment with their lives.

The Government had established national committees containing the word "dialogue" in their title and, according to the Government, "partnership" also seemed to be a concept with which the Government wanted to face national challenges. These were, however, deliberate deceptions and abuses of terms which were normally used to describe an equal exchange. However, the Government still took decisions unilaterally in its own best interests and to sustain its power, but not for the benefit of the people. This was exemplified, inter alia, with the High-level Steering Committee on Social Dialogue which, despite its nice name was not, however, linked to social dialogue, notwithstanding the Government's assurances that social dialogue was welcome. Social dialogue in Swaziland only meant one thing: the Government talked, if ever, with employers' and workers' representatives and at the end acted as it pleased. This was not social dialogue, but an anti social monologue.

Social dialogue meant that workers, employers and government representatives communicated in a way that enabled them to know and understand the respective positions and to reach agreed conclusions. Only on such a basis could a country's social and economic progress be promoted. Social dialogue was also key for reducing gaps between laws and their implementation. He was very concerned at the fact that, despite the demands of the international community based on the ratification of the Convention more than 30 years ago, the Government had for years been violating Convention No. 87 and had not therefore been in a position to close the big gaps that existed in national laws. The Committee of Experts had noted that the High-level Steering Committee on Social Dialogue had not met for months. He therefore urged the Government to: (1) include the social partners in all decisions in regard to adjusting the Constitution and national laws to the requirements of Convention No. 87; (2) be open to social dialogue not only euphemistically on paper, but to really end its anti-social monologue; and (3) align the legal basis and its practical action with the requirements of Convention No. 87.

The Government member of Zambia aligned his Government with the statement made by the Government member of Mozambique, who had spoken on behalf of

the Government members of the SADC countries. He expressed appreciation at the comprehensive statement made and the measures taken by the Government of Swaziland in an effort to respond to the recommendations of the Committee of Experts. He considered that the ratification of over 30 Conventions, including all eight fundamental Conventions, was also a positive and commendable action. He also expressed support for the legal reforms undertaken by the Government.

Another Government representative, Minister of Justice and Constitutional Affairs, recalled that the current Government had only come into office in 2008 and that one of its priorities was to align national laws with the Constitution. Thirty bills were being drafted by the Attorney-General, but this task was challenged by the limited staff of his office. The Commission on Human Rights and Public Administration, appointed in September 2009, would receive reports on human rights issues from all citizens. The amendment to the Prisons' Act was an executive decision to be taken by the Minister of Justice and Constitutional Affairs. Once the ongoing drafting process was complete, the Bill would be forwarded to the Minister for Labour and Social Security, for submission to the Labour Advisory Board (LAB.) The workers' allegation that nothing was being done with regard to the Prisons' Act was therefore misleading. Furthermore, the unions had met with the police prior to the May Day celebrations to discuss security arrangements. The police had not harassed workers, but had attended the meeting to enforce the law in relation to certain individuals who were violating it. The Government regretted the death in custody of Mr Sipho Jele and had immediately initiated a public investigation led by a Principal Magistrate. The Government had nothing to hide on this matter and therefore a family doctor had been allowed to undertake the post-mortem, together with a government pathologist, and a lawyer appointed by the family was attending the investigation to test the evidence. With regard to the previously alleged murder of a worker, he emphasized that the Government had been cleared of all allegations following a high-level mission.

When the 2009 Public Service Bill had been submitted to Parliament, workers had lobbied for the Bill to be referred to the LAB, and the recommendations of the LAB had subsequently been considered by the Cabinet. In case of further issues pertaining to the Bill, he urged the unions to lobby Parliament as the Bill was now before Parliament.

The Government contested the statement that it used the Suppression of Terrorism Act indiscriminately to intimidate workers. The drafting of the Act was in line with UN Security Council Resolution 1373 (2001) and the Model Legislative Provisions on Measures to Combat Terrorism of the Commonwealth Secretariat and had been inspired by the United Nations Office on Drugs and Crime. According to its objectives, the Act was used to suppress all acts of terrorism and all individuals contravening the Act were arrested. In conclusion, he urged the Committee to take note of the significant progress made by the Government in responding to the issues raised and therefore insisted that Swaziland should be removed from the special paragraph in the Committee's report.

The Employer members specified that, as their position was clear, they would not further address the comments of the Committee of Experts concerning the right to strike and the requirements of the Convention concerning freedom of association and the right to organize. As in the past, it was not possible to assess the technical information provided by the Government to this Committee. The Government's assertion that significant progress had been made was disputable. The Labour Bill had been tabled before Parliament, but the request for a specific time frame for its adoption had not clearly been answered by the Government. The Employer members expressed their concern at the Minister of Labour's lack of staff. With regard to social dialogue, there had been no commitment to hold meetings of the High-Level Steering Committee, and the Government's indication that this Committee was fully operational was disputable. The Government's only express commitment on these issues had been to continue to provide further reports. The Ministry of Labour required support to ensure that national legislation was adopted in compliance with the Convention, that resources to support social dialogue were made available and that the Government provided reports on the real situation in the country. Thirty years after Swaziland's ratification of the Convention, scepticism remained. Unless positive measures were taken to comply with the Convention, this case risked remaining on the list of cases discussed by the Committee. The Employer members expressed support for the legislative steps that had been taken thus far. This case merited insertion in a special paragraph in the General Report. A high-level tripartite technical mission should be sent to Swaziland to inquire into the failure to adopt legislation to comply with the Convention, and to assess the current barriers to social dialogue.

The Worker members indicated that the situation in Swaziland had been a matter of concern for many years for a number of reasons: the harassment, persecution and murder of trade unionists; the numerous laws that were still contrary to the fundamental provisions of the Convention; and the lack of will by the Government to restore a climate of non-violence and full democracy. The Government should therefore cease all violent acts against trade unionists, all repression of trade union activities and any denial of human rights. They also called on the Government to commission an independent inquiry into the events of 1 May this year. The Government should finally complete the legislative reforms that had been recommended by the Committee of Experts, with particular reference to the amendment of the Industrial Relations Act and the 1963 Public Order Act, and to repeal the Decree/State of Emergency Proclamation and the Suppression of Terrorism Act. The Worker members insisted in particular that the Government finally keep its promises and create the conditions for meaningful and lasting social dialogue. They proposed for that purpose the organization of a high-level tripartite mission and called for the Committee's conclusions to be placed in a special paragraph of its report.

Conclusions

The Committee took note of the statement made by the Government representative and the discussion that took place thereafter. The Committee observed that the comments of the Committee of Experts had referred for many years to the need to amend the provisions of the legislation containing restrictions on the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and to organize their activities and programmes of action, as well as the need to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations and to amend the 1963 Public Order Act, which could be used to repress lawful and peaceful strikes.

The Committee noted the information provided by the Government representative that an Industrial Relations (Amendment) Bill, which amended a number of provisions objected to by the Committee of Experts, was now before Parliament under consideration by the relevant committee. The Government representative had indicated that the tripartite National Steering Committee on Social Dialogue for Swaziland had been established and a schedule of monthly

meetings had been agreed. He had added that a Commission on Human Rights and Public Administration had been appointed in September 2009 to further strengthen the protection of human rights, including workers' rights. Finally, the Government representative had repeated the previous statements made on the 1973 Decree/State of Emergency Proclamation and its implementing regulations and on the 1963 Public Order Act.

The Committee recalled that this case had been discussed on numerous occasions over the past ten years and that last year it had decided to include its conclusions in a special paragraph of its report. The Committee noted with concern the continuing allegations relating to acts of brutality by the security forces against peaceful demonstrations, threats of dismissal against trade unionists and the repeated arrests of union leaders, and firmly recalled the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threats or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties.

The Committee expressed the firm hope that the Industrial Relations (Amendment) Bill would be adopted in the very near future and that its provisions would be in full conformity with the Convention. Recalling that it was the Government's responsibility to ensure an environment of credibility, the Committee urged the Government to take concrete and definitive measures without delay to effectively repeal the 1973 Decree and to ensure the amendment of the 1963 Public Order Act in order to fully comply with the requirements of Convention No. 87 so that they could no longer be used to prevent legitimate and peaceful trade union activities. The Committee urged the Government to accept a high-level tripartite mission in order to assist the Government in bringing the legislation into full conformity with Convention No. 87, to enquire into the May Day 2010 incident and to facilitate the promotion of meaningful and effective social dialogue in the country.

The Committee expressed the firm hope that the National Steering Committee on Social Dialogue for Swaziland would be immediately convened in order to achieve meaningful and expedited progress with respect to the issues raised. The Committee requested the Government to transmit detailed information in its next report due to the Committee of Experts, including on the progress made in the adoption of the Industrial Relations (Amendment) Act and the concrete steps taken on the pending issues. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

The Committee decided to include its conclusions in a special paragraph of its report.

obtained at the same time and in the same branch of work" is repealed.

Document No. 265

ILC, 69th Session, 1983, Report of the Committee on the Application of Standards, paras 61-62

International Labour Conference

Provisional Record

Sixty-ninth Session, Geneva, 1983

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Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations

Report of the Committee on the Application of Conventions and Recommendations

CONTENTS

was to be expected that different points of view would exist as to the methods of organisation of workers and employers. The Government member of Spain stressed that it was clear that the principle of free choice contained in Convention No. 87 depended on the decision and the wish of the workers themselves. The Convention did not favour either trade union unity or pluralism provided the system corresponded to the free choice of those concerned.

58. Several members of the Committee, and in particular the Government members of Cuba, Czechoslovakia, Ethiopia, Hungary, the German Democratic Republic, the USSR and Zimbabwe and the Workers' members of Czechoslovakia and the German Democratic Republic, did not agree with the conclusions of the general survey on the question of trade union unity. The Government member of the USSR was of the view that the problem of trade union pluralism involved both legal and factual aspects. The text of Convention No. 87, he added, contained no mention of trade union monopoly. He referred to a report of an ILO mission entitled "The Trade Union Situation in the USSR" as reflecting a different point of view from the concept of trade union pluralism as an ideal. He also mentioned the Ninth Conference of Asian States Members of the ILO in 1980, the report of which stated that Convention No. 87 did not express any view either for or against trade union unity and that the supervisory bodies had recognised that workers and employers were generally opposed to pluralism and competing trade unions and had requested governments to promote unity in order to avoid difficulties. As regards the factual aspect, trade union unity, according to the Government member of the USSR, had always been an advantage for the development of the workers' movements, not only in the socialist countries. He, therefore, disagreed with the view of the Committee of Experts that legislation should not specifically name a single central organisation, even if the existing trade union organisation had requested this. The Government member of Czechoslovakia considered that, in the socialist countries, where all the forces of production were united for the attainment of common objectives, trade union unity was indispensable. He considered it legitimate for united trade union movements to call for and be accorded certain prerogatives to strengthen their bargaining position. Similar tendencies towards trade union unity could be encountered in the developing countries where development objectives were the main priority. He considered strange the supposition made in the general survey that trade union unity in Western countries was the result of a voluntary process whereas, in the socialist countries and in the developing countries, it was always imposed under pressure from governments. Several members, including the Government member of Cuba, the Government member of the German Democratic Republic and the Workers' members of Czechoslovakia and Romania said that the question of pluralism or trade union unity had to be seen against the historical perspective of the experience of each country. The Government member of Ethiopia stressed that the object of Convention No. 87 was not to make trade union diversity obligatory, as unity had always been the long-standing ideal of the workers of the world, on whose initiative Convention No. 87 had been elaborated. In her view there was a fundamental difference between a situation where the unified structure was established by legislation, commencing with the existing trade unions, and a situation where the workers and their unions united voluntarily into a single organisation. This view was supported by the Workers' members of the Byelorussian SSR and the USSR.

59. Some members pointed out the dangers that could, in their opinion, arise in situations where pluralism existed. The Workers' member of Colombia stated that, in countries where pluralism existed, or was said to exist, many workers' organisations had been used by governments for political ends. The Government members of Ethiopia and Czechoslovakia and the Workers' members of the Byelorussian SSR, Colombia, Czechoslovakia, Ecuador and Mali pointed out that trade union pluralism favoured employers and weakened the workers.

60. Referring to the study published by the ILO in 1960 on the trade union situation in the USSR, the Government member of the United States noted that the supervisory bodies had repeatedly rejected the views contained in that report.

Right to strike

61. The question of the right to strike gave rise to a number of comments by the members of the Committee. The Workers' members stated, without recognition of the right to strike, freedom of association did not exist. They welcomed the fact that the Committee of Experts had considered that this right constituted one of the essential means at the disposal of the workers for the defence and promotion of their interests. According to the Workers' members, the General Survey revealed that the right to strike was subject to numerous restrictions in many countries, and they launched an appeal to all member States to improve this disturbing situation, including that of the public service and supervisory staff. In cases of prohibitions or restrictions on strikes imposed exceptionally in the public interest, provision should be made for workers to enjoy all necessary guarantees. Referring to the sanctions that were frequently imposed on strikers, the Workers' member of Japan stated that, according to the Committee of Experts, the participation in peaceful strikes, even if these were illegal, should not result in sentences of imprisonment being imposed. He considered that this interpretation would have a favourable influence on legal decisions that were taken regarding trade unionists who had been arrested for strike action. The Workers' member of Liberia stated that responsible trade unions did not call a strike unless this was necessary. He considered that the right to strike should be granted to the workers of every country including those in the developing countries.

62. The Government member of Tunisia noted that, for several years, the Committee of Experts had sought to introduce more clarity into the conditions in which the right to strike could be exercised by trying to conciliate the right of workers to defend their personal, economic and social interests with the necessity to maintain social peace and the national interest, which was an essential condition for maintaining the rhythm of the national development effort. He pointed out, however, that his Govern-

ment was not in agreement with the Committee of Experts concerning the interpretation which the Committee had given to the concept of essential services. He considered that international standards should not be applied in the abstract when dealing with concrete differences which characterised the national conditions of member States, In addition, he wondered whether it would not be useful to seek a better definition of the difficult and fundamental concept of the right to strike or to envisage a specific international Convention on this subject.

Collective bargaining

63. The Committee as a whole emphasised the close links which existed between freedom of association and collective bargaining. The Government member of Belgium pointed out that, if the principles of freedom of association were not respected, any valid agreement between the social partners lost the significance which the supporters of an economic and social democratic system wished to give to it. The Workers' members considered that collective bargaining had, in recent years, been subjected to too many limitations with governments claiming serious economic and financial difficulties. They considered, however, that, even in these cases, the restrictions imposed should be exceptional measures and of short duration. The Employers' members also considered that the right to bargain collectively without impediment or restriction was of primary importance since it implied both dialogue and the concept of agreement which could only bear fruit if they were exercised without interference by the State. The Employers' member from Venezuela emphasised that the intervention by governments in the determination of conditions of employment was not only a denial of the basic principle of freedom to negotiate, but it did not contribute to economic and social progress. In his view, dialogue and direct agreement between the parties was the best method of solving problems in labour relations matters.

64. Several Workers' members including those from Denmark, France and the Netherlands referred to the impediments placed by governments, for reasons of incomes policy, in the way of free determination of wages, especially in the developed countries. The Workers' member of France considered that the economic difficulties of the Western countries threatened to jeopardise the right to bargain collectively. He added that the guarantee of this right was a obligation for States and that governments had a duty to play a role in encouraging collective bargaining.

65. The Government member of the Netherlands expressed regret that the Committee of Experts had not, in its general survey, given an interpretation of the obligations concerning collective bargaining which flowed from Convention No. 87. He referred to the problems confronting certain countries which tried to reconcile the concept of collective bargaining with socio-economic policy, in particular employment policy. In his opinion, the general survey only provided a few guidelines as to what should be done to take account, on the one hand, of the concern of governments to maintain a reasonable standard of living for all, taking account of the economic situation, and, on the other hand, the objective of non-interference by the autorities in collective bargaining.

66. The Workers' member of Senegal referred to the Collective Bargaining Convention (No. 154), adopted by the Conference in 1981. The Government member of Sweden expressed the wish that the examination of this Convention by member States could also lead to a reappraisal by these States of the possibility of ratifying Conventions Nos. 87 and 98, especially as regards those which had not yet done so.

67. As regards the right to bargain collectively of workers in the public service, the Workers' members noted that, at the normative level, some progress had been made with the adoption by the Conference in 1978 of the Convention concerning the Determination of Conditions of Employment in the Public Service (No. 151). According to the Workers' members, this Convention had been ratified by too few countries, and States should endeavour to apply it faithfully and completely, thereby giving effect to the resolution adopted by the Joint Committee on the Public Service at its session in May 1983. The Workers' member of Japan expressed the wish that the next general survey on freedom of association should include an examination of the extent to which Convention No. 151 was being applied. This would be all the more important since Article 6 of Convention No. 98 permitted the exclusion from its scope of public servants engaged in the administration of the State and, frequently, this provision was given too wide an interpretation, which meant that in several countries all, or the majority of public servants were excluded from the protection of the Convention. The Workers' member of Czechoslovakia mentioned that, in contrast, in the socialist countries collective agreements were concluded in all public undertakings, industries and services.

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68. The Committee noted, both in its general discussion and in its consideration of individual cases, in the light of comments made by the Committee of Experts, that there existed fundamental differences of interpretation and application between the legislation and practice of many countries and those provisions of the Convention concerning the right of workers to establish organisations of their choice. This was particularly the case as regards the socialist countries. These divergences reflected different concepts of freedom of association. The Committee expressed the wish that the divergences thus encounterd could be overcome and clarified with the assistance of the ILO, in particular by the organisations of seminars and other means.

Conclusions

69. The Committee concluded its work on the general survey by noting that the discussion which had taken place had offered to all the possibility of expressing, with complete frankness, their positions on the difficult problems which freedom of association and collective bargaining presented in the world of today. The Committee expressed the hope that the general survey of the Committee of Experts and the discussion that had taken place in the Conference Committee would encourage the recognition and the promotion of freedom of association which the ILO in its Constitution had solemnly undertaken to pro-

Document No. 266

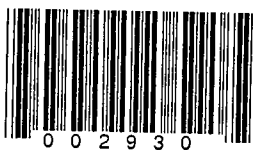
ILC, 80th Session, 1993, Report of the Committee on the Application of Standards: Submission, discussion and adoption, pp. 28/7-28/17

INTERNATIONAL LABOUR CONFERENCE

EIGHTIETH SESSION
GENEVA, 1993

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA



PROPOSED CONVENTION CONCERNING THE PREVENTION OF MAJOR INDUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We move on now to the adoption of the proposed Convention concerning the prevention of major industrial accidents. I submit the Preamble for your approval. If there are no objections I shall consider it adopted.

(The Preamble is adopted.)

Original Arabic: The PRESIDENT – We shall now adopt the proposed Convention, Article by Article.

(Articles 1 to 22 are adopted seriatim.*)*

Original Arabic: The PRESIDENT – We shall now adopt the proposed Convention as a whole. If there are no objections, I shall consider it adopted.

(The proposed Convention is adopted as a whole.)

Original Arabic: The PRESIDENT – In accordance with article 40, paragraph 7, of the Standing Orders of the Conference, the proposed Convention concerning the prevention of major industrial accidents as adopted by the Conference, will be submitted to the Drafting Committee of the Conference for the preparation of the final text.

PROPOSED RECOMMENDATION CONCERNING THE PREVENTION OF MAJOR INDUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We now move on to the adoption of the proposed Recommendation concerning the prevention of major industrial accidents, starting with the Preamble. If there are no objections I shall consider it adopted.

(The Preamble is adopted.)

Original Arabic: The PRESIDENT – We shall now adopt the proposed Recommendation, Paragraph by Paragraph.

(Paragraphs 1 to 6 are adopted seriatim.*)*

Original Arabic: The PRESIDENT – We shall now consider the proposed Recommendation as a whole. If there are no objections. I shall consider it adopted.

(The proposed Recommendation is adopted as a whole.)

Original Arabic: The PRESIDENT – In accordance with article 40, paragraph 7, of the Standing Orders of the Conference, the proposed Recommendation concerning the prevention of major industrial accidents as adopted by the Conference, will be submitted to the Drafting Committee of the Conference for the preparation of the final text.

RESOLUTION CONCERNING EXPOSURE TO AND SAFETY IN THE USE OF BIOLOGICAL AGENTS AT WORK, SUBMITTED BY THE COMMITTEE ON THE PREVENTION OF MAJOR INDUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We shall now move on to the adoption of the resolution concerning exposure to and safety in the use of biological agents at work. If there are no objections, I shall consider this resolution adopted, taking into account the reservations expressed.

(The resolution is adopted.)

Original Arabic: The PRESIDENT – We have now completed the consideration of the report, the proposed Convention and Recommendation, and the resolution submitted by the Committee on the Prevention of Major Industrial Accidents. I express my gratitude to the Chairman, the Vice-Chairmen, the Reporter, the members of the Committee and the staff of the Secretariat for the excellent work they have done, with special thanks to the experts. I would like to assure Mr. Campbell, the Employer Vice-Chairman, that we will not do to him what the people did to Socrates. I thank the Secretariat for the excellent work they have done.

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND ADOPTION

Original Arabic: The PRESIDENT – We shall move on to the second item on our agenda – the report of the Committee on Application of Standards, contained in *Provisional Record* No. 25.

It is my pleasure to ask the officers of the Committee to come to the rostrum. The Chairman, Mr. Pérez del Castillo, Government member, Uruguay; the Employer Vice-Chairman, Mr. Wisskirchen, Employers' member, Germany; the Worker Vice-Chairman, Mr. Peirens, Workers' member, Belgium; and the Reporter, Ms. Wiklund, Government member, Sweden.

I give the floor to Ms. Wiklund to submit the report.

Ms. WIKLUND *(Government member, Sweden; Reporter of the Committee on the Application of Standards)* – It is an honour for me to present to this session of the Conference the Report of the Committee on the Application of Standards which appears as *Provisional Record* No. 25.

The Committee was set up under article 7 of the Standing Orders of the International Labour Conference to consider and report on item III on its agenda, "Information and reports on the application of Conventions and Recommendations".

The Committee based its work on the report of the Committee of Experts on the Application of Conventions and Recommendations. As usual, the Committee divided its work into different parts, as is reflected in the Report. Part One began with a general discussion of various aspects of the application of international labour standards. It then discussed the General Survey of the Committee of Experts which this year dealt with the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981. Lastly, it examined a

number of individual cases relating to compliance by States with their obligations under or relating to international labour standards.

Numerous statements were made during the Committee's general discussion. In many of these statements, opinions were voiced concerning the roles of the supervisory bodies and the complementary mission of the Committee of Experts and the tripartite Conference Committee on the Application of Standards.

The Conference Committee again acknowledged the work done by the Committee of Experts based on the principles of independence, objectivity and impartiality and emphasized again the importance of dialogue between the two Committees.

This year's Conference Committee on the Application of Standards was rather special, in that it was the first time ever that the Committee of Experts on the Application of Conventions and Recommendations was represented. The Chairman of the Committee of Experts, Mr. José Maria Ruda, attended the general discussion and that of the general survey, in accordance with the wish expressed by the Conference Committee last year.

The Committee very much welcomed this development, as a mark of the intensification of constructive dialogue between the committees. Each one of these is an essential element in the ILO's supervisory machinery which according to Mr. Ruda and many others, is the most effective of its kind in any international organization.

The Committee expressed its warm appreciation of this direct contact between the two committees and hoped that the presence of the Chairman of the Committee of Experts will be ensured in the future as well.

The Committee was informed of the consideration being given within the Organization to ways in which the arrangements for requesting Government reports on ratified Conventions under article 22 of the Constitution might be improved. This followed the Committee's discussions in previous years of the difficulties encountered by some governments in fulfilling their reporting obligations.

There was general support for such efforts, although it was emphasized by many members of the Committee, and the Committee was reassured by the representative of the Secretary-General on this point – that any future reforms would in no case be allowed to weaken the quality and effectiveness of the supervisory system.

The Committee understood that a proposed balanced package of measures replacing certain automatic reporting procedures with more selective and objective ones could be foreseen. In this context the Committee wanted to underline the vital part played by employers' and workers' organizations at various stages of the supervisory system.

The question of the interpretation of Conventions was considered further by many speakers, in the light of an Office document submitted last month to the Governing Body, concerning the possibility under article 37(2) of the Constitution of the ILO of setting up a tribunal competent to give interpretations.

Diverse views were voiced in the debate. Some members expressed varying degree of support for a tribunal which, according to them, would speedily resolve disagreements regarding interpretations. Other members questioned the need for a tribunal given the existing supervisory system. The Committee agreed that the matter required further study.

The ILO's standard-setting policy was dealt with by several members. One innovation of particular interest to this Conference is the participation of a senior official of the International Labour Standards Department in the secretariat of technical committees of the Conference responsible for new instruments. This is seen as a means of improving the drafting of Conventions and Recommendations in the light of the Organization's experience with existing instruments.

Personally, I do welcome this cooperation between the technical and the standards departments. It is a fact that in technical committees which are given the difficult task to formulate international standards on specific subjects, for the majority of members, at least on the government benches, it is their first concrete contact with the ILO and with international standard setting.

With the assistance within the technical committees of experts from both technical departments and the International Labour Standards Department, the risk of confusion and ambiguities in the formulation and later application of standards can be reduced.

The Committee also draws to the attention of the Conference the different views expressed as to flexibility in ILO standards. Many members raised the importance of the principle of universality, both as regards the terms in which international labour standards are conceived and as regards the application in a continuously changing economic and social environment.

In this context, some members stressed the need to review and adapt standard setting and other activities in order to meet the new challenges. Others emphasized the link between economic development and transition, on the one hand, and the maintenance and improvement of social protection, which are the task of ILO standards, on the other.

The link between standards and development was on several occasions explicitly or implicitly referred to during our meetings.

There was, no doubt, widespread agreement in our Committee as to the role of the ILO's standard-setting activities in the fight against poverty and the realization of the objective of social justice which are the Organization's priorities.

Personally, I fully endorse this.

I do, however, think that we have to understand – and also to accept – that an issue as vast as that of poverty alleviation, in some quarters, can be approached from other angles. It is necessary also to consider the way in which we and they – mainly economists – look upon each other.

Perhaps because the mother tongue of our Chairman is Spanish, I have come to think of one of the most widely translated books in the world, namely *Don Quijote* by Cervantes. The subject-matter of that famous novel is idealism and realism.

Like Cervantes, I am convinced that we need them both – the Knight and his Squire. Therefore both sides participating in this debate should try to learn from each other – realizing that the means are always subordinate to the aims.

Two subjects – freedom of association and employment policy – held the Committee's special attention. The report shows the opinions of the mem-

bers of the Committee as to the particular question of the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and whether and how far that Convention protects the right to strike.

It was not for the Committee to come to any agreed conclusion on this point. The Committee noted that the General Survey of the Committee of Experts will next year be on the subject of freedom of association and Convention No. 87.

The other subject covered in this part of the report is the implementation of a policy of full, productive and freely chosen employment, under the Employment Policy Convention, 1964 (No. 122). Contrary to most Conventions, this is a policy instrument and it is my belief that such a Convention requires an approach and discussion which differ from other instruments.

The Convention cannot be regarded as a blueprint for economic or employment policies in an ever-changing world economy. This Convention mentions, and that is extremely important, a framework, some basic principles and ideas and also some fundamental procedures for economic and employment policy.

As you will find in the report, the discussion on this Convention, therefore and as usual, has its own specific characteristics.

As regards technical cooperation and standards, and the various forms of assistance given by the Office, the Committee heard with interest of the inclusion of standards specialists in 12 of the new multidisciplinary teams in the field. Several Government members spoke of the help they had received through the Office. The Committee noted the objective of the Office of increasing promotional activities as complementary to supervisory activities – and in no way detracting from them.

The Committee was very interested in the Committee of Experts' indications as to the ILO's relations with other international organizations, especially on human rights issues, and with special reference to the World Conference on Human Rights in Vienna. The Committee expressed clearly its view that the ILO should improve its image and play a more active role in the debate on labour and social issues in countries at all stages of development, including such areas as the protection of children.

The Committee devoted the second part of the general discussion to the overall study by the Committee of Experts which this year dealt with the application, by all member States, of the Workers with Family Responsibilities Convention, (No. 156), and Recommendation (No. 165), 1981. Those ILO standards have a dual objective. They aim at creating equal opportunity and treatment in working life between men and women with family responsibilities. And, in addition, they have the goal of promoting equality between workers with family responsibilities and those without such responsibilities.

It was apparent from the many statements made that, all over the world, women especially face difficulties of various kinds in combining gainful employment with family responsibilities. Women still shoulder all or most of the duties of caring for family members and maintaining the home, while men are the main breadwinners – full stop.

Moreover, it appeared from the discussion that women are still suffering considerable discrimination in the areas of vocational training and employment on account of their actual or anticipated family responsibilities. Indeed, a number of statements indicated that for women labour conditions had worsened in this respect as a result of the high and increasing levels of unemployment which often result from structural adjustment measures.

Though there was general support for the objectives of the standards in question, reservations were expressed by some as to the feasibility of meeting those objectives through the application of the standards. Certain members concluded that there was a case for revising the Convention in the hope that it would be reframed in terms that were more practicable, thereby increasing the possibility of a higher rate of ratification.

Generally, however, it can be said that the discussion concluded on an optimistic note. Many speakers commended the Committee of Experts for providing clarifications and explanations concerning the requirements of the instruments, which might encourage more countries to apply the instruments and to ratify Convention No. 156. For many speakers, the survey was an important contribution to the activities to be undertaken next year, which has been declared the "International Year of the Family" by the United Nations.

This was considered an opportune time for the ILO to disseminate information on the implementation of these instruments, concerning both shortcomings and successes, to the United Nations and the ILO's constituents. The aim is to promote equality worldwide and to inspire more States to ratify Convention No. 156.

The third and largest part of the work of the Committee consisted in examining, on the basis of observations made by the Committee of Experts, individual cases of respect for ILO standards. For the discussion of individual cases, the Committee continued to apply the working methods which it had previously followed.

As regards cases concerning the fulfilment of certain obligations, or so-called automatic cases, however, the Committee tried a new approach designed to increase the impact of the discussion and make better use of the time available.

These are the cases concerning compliance with the obligations under articles 19, 22 and 35 of the Constitution to supply reports on ratified Conventions, in reply to comments made by the Committee of Experts; to supply reports on submission to the competent national authorities of instruments adopted by the Conference; and to supply reports on unratified Conventions and on Recommendations.

The new approach was simply to discuss all those cases in sequence at one sitting instead of examining them piecemeal during several different sittings. The results may be regarded as interesting, and the Committee hopes to continue next year to refine its approach to these cases in order to find the best possible means of improving its effectiveness in this respect.

The cases considered in this way are mentioned under the appropriate headings in section D of the report and, as usual, Part Two of the report gives full details of the information provided by governments to the Conference in response to the indications of the Committee of Experts and also gives details of the Committee's discussions of these cases.

Further, the Committee examined the application by 33 governments of their obligations under individual ratified Conventions.

It was pleasing to note that all the governments invited by the Chairman to participate in the Committee's discussions of their cases of this kind and present at the Conference responded to his invitation. Many of these cases concerned problems of the application of Conventions relating to freedom of association, forced labour or equal opportunity and treatment.

The Committee decided to draw the attention of the Conference to the case of Myanmar as regards the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Paragraph 125 of the report expresses the Committee's deep concern that the necessary measures should be taken to guarantee the application of the Convention.

The Committee also decided to note with grave concern in paragraph 127 that there had been continued failure over several years to eliminate serious discrepancies in the application by Sudan of the Forced Labour Convention, 1930 (No. 29).

In these two cases, the Committee invites the Governments concerned to supply the relevant reports and information so that the Committee may follow up the matters at the next session of the Conference.

Part Two of the report contains a record of the detailed discussions of the individual cases, as well as the conclusions adopted by the Committee.

I want to take this opportunity to thank the Chairman of the Committee, Mr. Pérez del Castillo, as well as the Employer and Worker Vice-Chairmen, Mr. Wisskirchen and Mr. Peirens, for the competence and efficiency with which they made sure that the Committee could complete such a large volume of work and discharge the heavy responsibilities which the Conference placed on it. May I also through you thank Mr. Bartolomei de la Cruz for his valuable support and also all his staff for their dedicated work, whether they were seen in the meeting room or not.

As you can see, the Committee on the Application of Standards continues to perform its vital tasks in a spirit which recognizes both the strength of traditions and established procedures and the necessity to maintain a dynamic attitude in the constant search to ensure maximum effectiveness.

I am convinced that it is the idea of dialogue which lies behind both the strength and the dynamism, and it is in this confidence that I commend the report to the Conference.

(Mr. Gray takes the Chair.)

Original German: Mr. WISSKIRCHEN *(Employers' member Germany; Vice-Chairman of the Committee on the Application of Standards)* – Our Committee has succeeded once again in presenting to the Conference a report that is not only comprehensive but very substantive. The Reporter has touched on and explained the essential points.

We noted in our Committee, like others, that the world is undergoing a very rapid and intensive process of change.

I could therefore place my contribution under the motto of change, for the challenges involved are ultimately challenges to the efficiency and credibility of this Organization, because the ILO is not exempt from these changes on the eve of the twenty-first century. On the contrary, it must make its own contribution to this change. The ILO must therefore review its goals and priorities in its respective areas of activity. The area of standard setting should be reviewed as well as those of the supervisory machinery, technical cooperation and advisory services and an organizational structure must be devised that is adequate to meet these new challenges. The IOE recently presented proposals for a basic reform of the ILO, which we emphatically endorse.

In the Committee on the Application of Standards, we have noted for a long time now that it appears essential to make amendments to our standard setting activities. We have been registering a significantly reduced rate of ratifications in connection with the more recent instruments over the past 15 years. At the same time, we see that member States are meeting the obligations which they have accepted in ratifying the instruments to an increasing less extent. The close connection between standard setting, ratification and practical application has been evident for many years. Standards which were too high, too complex, unclear or too detailed in content and aims will either not be ratified or will be ratified with the certainty that they will not be implemented in law and in practice. Such an attitude is prejudicial to the credibility and the prestige of member States as well as the ILO as a whole.

In this connection we must also develop greater sensitivity to noting when standards have become obsolete rather than reacting only when there is a series of denunciations of an instrument.

An appropriate adjustment to the new challenges requires greater use of the assistance, support and advisory services of the ILO must be strengthened. We consider these services of the ILO, from the standpoint of practical efficiency, to be as at least as valuable with regard to the application of standards as the supervisory machinery in the traditional sense.

The comments of the Committee in the general part of its report on the Employment Policy Convention, 1964 (No. 122), are in essence a very objective inventory of the problems in this respect. Meanwhile, there is general agreement that there can be no isolated employment policy which can create lasting jobs profitably. This requires the coordination of many areas of policy, not least of which is collective bargaining whereby the social partners can set the points towards an increase or decrease in jobs.

Some matters of principle concerning the supervision of standards and the supervisory machinery could be placed under the heading of "change" and dealt with in this context. Concerning the two most important supervisory bodies of the ILO, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards, there has been no doubt for at least two years that both bodies are autonomous and independent and do their work accordingly. Equally undeniable, according to the unambiguous statement of the Committee of Experts in its report of 1991, is the fact that the decisions of the one are not binding on the other, and that the respective evaluations do not prevail *erga omnes*. We think it is a very good sign of a new dialogue between these two autonomous bodies within the ILO super-

visory system that the Chairman of the Committee of Experts accepted the invitation of our Committee and was present during the entire general discussion in our Committee as a very attentive observer. Mr. Ruda, the Chairman of the Committee of Experts, welcomed this new and intensive form of dialogue, a dialogue which in Mr. Ruda's words includes a review of previously held opinions.

Now that the more formal but essential issue of the autonomy and independence of the two bodies has been clarified, in future only the substance of the different views will be at issue. Such differences do not occur very often, but occasionally in connection with particularly important questions, in particular the interpretation methods to be applied in regard to Conventions and their concrete results. The only measuring rod for the interpretation of Conventions is, in our view, international customary law as well as international law in the written form set forth in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. This is also in principle recognized by the Committee of Experts. As we repeatedly stated in the Conference Committee, none of the interpretation methods that are relevant under international law allows for the "creation" of an extremely broad right to strike to be derived from Convention 87, such has been gradually developed by the Committee of Experts. Neither the text nor any discernable agreement between the signatory States or their subsequent conduct allow for such an interpretation. On the contrary, in the drafting of Conventions Nos. 87 and 98, it was clear that issues of the right to strike were not to be dealt with. We have already referred to the corresponding documents. The historical facts confirm therefore merely what results from the first priority interpretation rule. The Employers, for example, already in 1953 expressed this view in the Governing Body when the Committee on Freedom of Association began to develop a right to strike.

We are not dealing here with a classical interpretation *de lege artis*. To that extent, a close connection may exist with the undeniable fact that the decision-making body of the ILO, that is to say the plenary of the Conference, has hitherto been deliberately prevented from dealing with this topic. A proposal from the Employers last year to place this problem on the agenda of the Conference was also rejected.

Implicitly, the right to strike developed by the Committee of Experts is virtually unlimited and the regulatory scope of the member States therefore tends to be non-existent.

The formulae developed by the Committee of Experts, which allow almost any type of strike and proscribe almost any restriction as being contrary to international law, cannot be justified on the basis of any interpretation instrument derived from Convention No. 87, because a strike is obviously not the internal affair of a trade union. It is directed primarily against employers but, given the scale of the division of labour in our time, its inevitable and calculated impact tends increasingly and ever more intensively to affect third parties and the general public. So-called "solidarity strikes" are intentionally directed first and foremost against people who are not actually involved in the conflict and political strikes are always designed to put pressure on lawmakers – hence, in a democracy – on parliament. No State can afford to accept such action without some form of regulation. On the contrary, it is the task of every State to make provision, in the area of labour conflict, for the protection of individual citizens and the population as a whole. The basic purpose of a State and its chief *raison d'être* is to provide the best possible protection for its citizens.

In recent years there has been a suggestion, not unrelated to these interpretation issues, that article 37, paragraph 2, of the ILO Constitution should be examined more closely. According to this provision, the Conference, at the suggestion of the Governing Body, can draw up rules for the establishment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention. The Office has prepared a document in this connection, dealing with various aspects of article 37, paragraph 2, of the Constitution and other issues of interpretation. Credit is due to the Office for its thorough and careful work. A whole series of findings are extremely enlightening. Some comments, however, are not so clear and call for further explanation and examination. In the Committee we also discussed certain points in greater depth and voiced a certain amount of criticism. Moreover, some issues which are not addressed at all by the document will have to be considered at some stage. To sum up, therefore, we would say for the time being that this important issue cannot be decided on the basis of the present document. Further careful study is necessary. Only when all further possibilities have been explored can we consider whether and how such a tribunal under article 37, paragraph 2, of the ILO Constitution might be established.

This year's General Survey under article 19 of the ILO Constitution is devoted to Convention No. 156 and Recommendation No. 165. This, too, is a topic oriented towards the future and towards change. The question at issue is the equality of workers, particularly those with and without family obligations. While nobody would underestimate the significance of this topic or fail to support the general objective, the measures needed to attain these goals cannot be limited to the typical employee-employer relationship, but have other far-reaching implications, partly of a general political and social nature. Full attainment of the goal in question would require an almost inconceivably large package of practical measures, in particular statutory regulations. Such an array of regulations would be bound to conflict with the basic principles of a free social order. The Convention therefore avoids this unnegotiable path but heads off in another direction that is no less fraught with problems. It establishes extraordinarily wide-ranging and comprehensive objectives, which are to be incorporated in any policy relating thereto. Together with further sub-goals, which are not always crystal clear, the whole experience creates an impression that family and occupational responsibilities can be combined without conflict provided that the State steps in with the necessary measures and regulations. As these ideas are thus conceived with an ideal situation in mind, they are bound to be unwieldy. The experts talk about flexibility but what we have before us is a considerable lack of clarity and vagueness. One gets the same impression from the way individual provisions of the Convention are dealt with in the experts' report. Member States have raised many questions about the meaning and interpretation of the individual provisions and the Committee of Experts has

tried to give answers, which tend to reinterpret the obligations in very broad terms.

From the methodological point of view, it is extremely interesting to note that the Committee of Experts, in its attempts at interpretation, refers in practically all cases to the preparatory work, which therefore determines their interpretation. We find this aspect important in the light of the general discussion of the matter of deriving a right to strike from Convention No. 87.

Since the instruments before us do not prescribe specific and limited measures but only a goal to aim at, we are no longer dealing here with the flexible standards which are certainly also sought by employers; we are dealing rather with an overloaded instrument which describes an ideal goal. The Report of the Committee of Experts itself shows that we are not dealing with a flexible and easily applied Convention, because any measures taken by member States, whenever these are assessed by experts, are routinely described as inadequate and therefore criticized.

The member States have evidently recognized the problems inherent in these instruments, since only 19 ratifications have thus far been registered, and some of the States which have ratified the Convention will hardly be in a position fully to comply with its exacting requirements. One of the contracting States has not even submitted its first report. Although the employers have a natural interest in everyone being able to attain self-fulfilment through their occupation, we are sceptical that such a dream could be realized on the basis of standards alone. There are, after all, deeply rooted, traditional values which must be taken into account, and they can only be changed cautiously, and in small steps. This is what happens in practice in plants and factories. A uniform comprehensive model which takes account of different value systems and allows time for a gradual change in attitude is along way off.

In any case, we recommend that the report of the Committee of Experts be very carefully taken into account. Its analysis might finally lead to a review of Convention No. 156 with a view to making it more precise, practical and realistic.

The main object of the Committee is to examine the extent to which member States have met their obligations to the ILO. We are talking about varied reporting obligations and about material obligations of the ratifying States to implement Conventions which they have ratified. During the proceedings we have clearly differentiated between the so-called formal and material obligations. The purpose of concentrating our discussion of the report issues into one afternoon was to stress the significance of the issue, to bring together all the States concerned and to make better use of the limited time available to the Committee. This seems to have succeeded. It was not the purpose of the new procedure to absolve the member States concerned from the duty to reply.

Moreover, there has been a stagnation, or even decline, in the fulfilment of reporting obligation. This has caused much concern among the experts and on our Committee, since the fulfilment of reporting obligations is essential to any meaningful monitoring. Late or incomplete reports, or no reports at all, place the whole system in question and create an unacceptable degree of inequality in the treatment of different member States. Since, on the one hand, the absolute numbers of reports due and received reaches new record levels owing to the increase in membership, in ratifications and in Conventions, the Committee has long recognized the necessity of taking steps to clarify the situation. At the request of the Conference Committee, the Office has produced a document with many proposals which could improve the situation. We are grateful for these very meticulous deliberations. The approach outlined there is one which we can support, and we trust that the Governing Body will soon take the necessary decisions.

As we have already noted during the discussion in Committee, the only thing that must not happen is that nothing happens.

It is in the very nature of our review system that we deal mainly with cases in which there is a considerable discrepancy between statute and practice in a member State and the demands of a given Convention. Nevertheless, we do not forget that most member States faithfully fulfil their obligations under the Constitution and the ratified Conventions. The problematic cases and the relevant discussions in the Committee are described in detail in the comprehensive annex to the general part of our Report. We do not want to name particular cases here because that would seem somewhat arbitrary. May I, however, say that there do exist most serious violations of human rights, such as persecution for ethnic, religious and political reasons, and these occur on a mass scale and lead to many deaths. It is regrettable that we are not even in a position to deal with these very clear violations of basic Conventions. On the contrary, like many other organizations in the world, we seem to be helpless in the face of these terrible events.

But whatever the sweeping changes happening in our time, our high recognition for the President of our Committee, and for his prudent guidance of our discussion remains undiminished, as it does for our Reporter and for the Office's large team under the very careful guidance of Mr. Bartolomei. All have made vital contributions.

We also remain firm in our desire for objective cooperation with the Workers' group and their spokesman, Mr. Peirens. My special thanks go to the Employers' group on the Committee for their unswerving support especially this year, represented by Mr. Potter.

Original French: Mr. PEIRENS *(Workers' member, Belgium; Vice-Chairman of the Committee on the Application of Standards)* – The role of the ILO in connection with international labour standards and their supervisory machinery in this changing world was the leitmotif in many speeches during the general discussion in our Committee.

Several members in this context pleaded in favour of a revision and updating of the supervisory machinery and in particular of the constitutional obligation to send in reports. The Office is also preparing a document for the Governing Body for November 1993.

The Workers' group of our Committee is of the opinion that this is not a secondary aspect of a technical nature. On the contrary, the sending of reports together with the observations of the workers' and employers' organizations is indispensable for the operation of the supervisory machinery.

We would like to emphasize that it is necessary to be prudent and to ask the competent bodies of the

ILO, that is the Governing Body, not to take hasty decisions which might, directly or indirectly, weaken the supervisory machinery and therefore the working of our Committee.

The Workers' group of our Committee proposes that the Governing Body, after a first discussion in November, should defer the question to next year so as to discuss it at the Conference and in particular in the Committee on the Application of Standards. Our Committee has, in fact, agreed to devote a special sitting at the next session of the Conference to the consideration of the future of the standard-setting machinery and the supervisory machinery, as can be found in paragraph 136 of our report. The Committee of Experts, in paragraph 12 of its report, has also indicated that it would put forward its views regarding the future of standards and the supervisory machinery of the ILO. The Governing Body could thus take a decision after the 81st Session of the Conference.

The Workers' group of the Committee feels that the proper working of the supervisory machinery is of capital importance. We are not against change on the condition that the future operation of the supervisory machinery is reinforced.

We would like to draw the attention of the Conference to the fact that the Employers' and Workers' groups have pleaded many times in favour of a reinforcement of the supervisory machinery and most of the Governments have quite clearly indicated their support of the standards and supervisory machinery.

Several Government members have declared that the supervisory machinery of the ILO is superior to that of other international or supranational organizations and that we should not be influenced by systems of an inferior quality.

We would therefore firmly like to ask for the maintenance of a very regular control of the application of Conventions in both law and practice. Within this framework we would like to insist that particular attention should be given to the Conventions which have been classified in the category of fundamental human rights and to certain Conventions in the priority category, such as Conventions Nos. 81, 122 and 144. This classification was formally decided on by the Governing Body in 1987 on the proposal of the Ventejol report.

We would like to draw the attention of all the delegates of the Conference to the conclusions of this Ventejol report regarding the classification of Conventions.

This report concludes that the Conventions regarding the fundamental human rights, such as the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), require no revision and that, furthermore, most of them have already been revised.

The intervention of the supervisory machinery cannot be restricted to clear and flagrant violations of fundamental human rights. These have often become very sophisticated and masked by complex legislation, in the industrialized countries also. That is why we attach great importance to the sending in of first reports after the ratification of a Convention and to the sending of questionnaires and detailed reports on a regular basis, in particular for the fundamental Conventions regarding freedom of association, free collective bargaining, prohibition of discrimination and forced labour.

The ILO could also extend the present system of the complaints procedure, before the Committee on Freedom of Association to other Conventions and fundamental principles, as for instance equality of treatment, as was suggested by the Committee of Experts last March.

Furthermore, we would like to ask the Office to send the report of the Committee of Experts earlier. This would facilitate the participation of workers in the developing countries.

As regards the possible setting up of a competent tribunal so as to resolve problems of interpretation for a given Convention in accordance with Article 37(2), the Workers' group is of the opinion that the setting up of such a tribunal could put into question the credibility and the authority of the Committee of Experts. To date, we are not convinced of the additional value of a tribunal as compared to the experts, to the dialogue of our Committee and the existing possibility of resorting to the International Court of Justice.

The extent of the right to strike was once again the subject of in-depth discussions, seeing as the Employers have some differences of opinion with the Committee of Experts.

We, as the Workers' group, firmly support the view of the Committee of Experts regarding the modalities of the right to strike.

The Committee of Experts has always based itself on the principles which have been developed and refined consensually by the tripartite Committee on Freedom of Association.

Even if the mandate of the Committee of Experts on the one hand and that of the Committee on Freedom of Association on the other are different, we really do not see how their respective interpretations could diverge. This would be illogical and inconsistent.

The legal value of the criticism of a group in our Committee, that is to say the Employers, as regards the position of the Committee of Experts should be put into perspective in view of the scope of the tasks of the two Committees. The Committee of Experts guarantees, through its composition and its methods of work, an objective assessment. Our tripartite Committee maintains and keeps alive the system, thanks to our knowledge of the situation in the field.

The position of the Employers, stating that the modalities of the right to strike as well as the scope of the concept of essential services should be governed by national law, is not compatible with the fundamental principle of universality of standards.

During the discussion of individual cases, we had a shocking case which illustrates very well the serious consequences of the non-respect of the universality of standards. This is the denial of trade union rights and the non-application of the labour code in the export processing zones in Pakistan (the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right of Association (Agriculture) Convention, 1921 (No. 11). Our Committee as a whole has adopted very firm conclusions on this particular case and if, next year, our Committee does not find that there has been concrete progress, the case of Pakistan, in the opinion of the Workers' group, will have to be referred to in a special paragraph. The Government has furthermore

formally accepted a technical assistance mission from the ILO.

As has already been mentioned by the Reporter, our Committee also dealt with the General Survey regarding workers with family responsibilities (Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation No. 165).

The Workers' group is of the opinion that the objectives of these instruments are very topical and that countries should increase their efforts to make them more concrete.

The General Survey clarified the scope of the Convention and this clarification will undoubtedly facilitate its ratification. We encourage States to ratify. This Convention should not in our opinion be revised.

Our Committee has also adopted important conclusions on several serious cases. Even though no special paragraphs were included in the report, the conclusions imply very important commitments in very specific and concrete terms.

We are referring to the cases of Colombia (very serious violations of law and practice as regards Convention No. 87); Costa Rica (Convention No. 87, in relation to solidarity movements or company unions); Brazil, the Forced Labour Convention, 1930 (No. 29), including child labour, and the Indigenous and Tribal Populations Convention, 1957 (No. 107); and India, the Forced Labour Convention, 1930 (No. 29), with reference to servitude for debt by child labour.

We have also given great attention to the Employment Policy Convention, 1964 (No. 122). In two cases (the United Kingdom and New Zealand) we were able to see that employment is considered as an element or a variable which can be adjusted among many others. Such a policy is not in conformity with Convention No. 122 and we would like to suggest that you read paragraph 55 of the general part of the report of the Committee of Experts. In both cases the Government is not fully consulting workers' and employers' organizations for the implementation of employment policies (Article 3 of the Convention).

The case of Sweden (Right to Organize and Collective Bargaining Convention, 1949 (No. 98), has demonstrated that certain countries adopt socio-economic policies without an in-depth consultation of the employers' and workers' organizations who are the authors and signatories of collective agreements. These policies have direct and indirect effects on collective agreements and collective bargaining. This approach is contrary to the basic principle of Convention No. 98. Compliance with collective agreements and the outcome of negotiations is, in our opinion, a non-negotiable principle.

Our Committee was able, for the first time, to discuss a case involving the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The United Kingdom has not respected Convention No. 144 because it failed extensively to consult the workers' and employers' organizations regarding the denunciation of certain Conventions and regarding the replies to the comments of the Committee of Experts.

The technical Conventions were also discussed. I am referring to the conclusion of the case of Morocco and the Benzene Convention (No. 136). Our Committee found that Morocco is not applying the essential provisions of this Convention, whose practical importance is more than simply a technical question. The health and even the life of the workers are involved. If there is no decisive progress in the very short term, we will come back to this case next year.

We have also dealt with questions of substance as to the organization and operation of social security in Chile (the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)). In this connection it is important to emphasize that the pension system in Chile is not only in violation of Convention No. 35, but its performance and credibility in the long run is also challenged by independent specialists. Furthermore, the system is not in conformity with the fundamental principles of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). Chile has not yet ratified these two Conventions. The Committee firmly insisted that Chile should reconsider its position.

Because of a lack of time it was not possible for us to deal with a number of other cases. We hope that the report of the experts will make it possible for us to take them up next year if we feel the need to do so (for example, Conventions Nos. 87 and 111, as regards Germany, Convention No. 107 for Bangladesh, and Convention No. 87 for Canada).

As pointed out by our Reporter, we were obliged to single out Myanmar in a special paragraph of our report (paragraph 125), since the Committee of Experts and the Conference Committee have pointed out for many years, in connection with Convention No. 87, that certain provisions of national legislation require modification, without success up to now.

The case of Sudan is reported in paragraph 127, and refers to the continued failure to eliminate deficiencies in the application of the Forced Labour Convention, 1930 (No. 29). I would like to remind you that last year we had to single out Sudan in a special paragraph because of the continued existence of forced labour and the lack of cooperation on the part of the Government with the ILO and our committee.

In conclusion, I too would like to thank our Chairman, Mr. Pérez del Castillo, who guided and chaired our discussions in a remarkable manner. I would also like to thank our Reporter Ms. Wiklund, the representative of the Director-General, Mr. Bartolomei de la Cruz, Mr. Zenger and Mr. Gernigon, as well as the whole team of the Office and the interpreters for their efforts and devotion. I would also like to thank the Employers' Vice-Chairman, Mr. Wisskirchen, for his spirit of dialogue and constructive approach.

I would also like to thank the officers of the Workers' Group, particularly Mr. Hickey, who had to leave because of bad health, and everyone else who helped us.

Our Report was unanimously adopted by the Committee. I commend it to the Conference for adoption.

Original Spanish: Mr. PEREZ DEL CASTILLO *(Government member, Uruguay; Chairman of the Committee on the Application of Standards)* – I was not intending to speak, but I would like to take this unexpected opportunity to thank the members of the Committee on the Application of Standards for the work that we have done together.

I would particularly like to mention the cooperation, the serious and responsible work done and the

spirit of teamwork shown by Mr. Bartolomie de la Cruz, Mr. Zenger and Mr. Gernigon, and at the same time, alongside them I would like to thank all those people who as our Reporter so rightly said were visible or not in the meeting room but who we felt were with us and that we could count on their work the behind-the-scenes activities of so many staff members of our Office, which make it possible for the activities of this Committee, which are particularly difficult demanding greater effort and more time, can be carried out and enable us to submit this report to you. This report which like anything produced by human hand has its good and bad points but is well intended and the result of the efforts we made to ensure that something as important as the Application of Standards, could be dealt with at this session of the Conference.

So thank you all once again. I hope that we will meet again next year so that we can go on striving towards our objectives and fulfilling our mandate of social justice as laid down in the Constitution.

Original Japanese: Mr. HIROMI *(Government adviser and substitute delegate, Japan)* – I would like to comment on the wording in *Provisional Record* No. 25, concerning the case involving Japan.

An amendment submitted by the Government of Japan is not reflected in the Committee's report; we request that the amendment submitted by the Japanese Government be included in the Record of the Conference.

When inviting the ILO to Japan in connection with Convention No. 87, the Chairman of the Committee said at the meeting, and I quote "... to visit Japan to discuss this question of the right to organize of the fire-fighting personnel in order to be able to see the situation for themselves on the spot, and discuss the matter with the persons directly concerned". However, in PV 13 of the Committee's minutes, this comment was summarized as "... [Japan] ...". Since we consider "to invite ... to come to Japan ... to obtain information directly" to be different from the conclusions of the Chairman of the Committee, we submitted our amendment. In the Committee, it was announced that this part was adopted as amended. However, the meeting ended before the specific wording of this amendment was presented. The version in the report of the Committee distributed today in *Provisional Record* No. 25 remains unamended, and therefore does not reflect the decision of the Committee.

I regret that this has happened in terms of procedure. This should have been dealt with at Committee level, but since this was not done due to the situation I have described, I would like to state that the Government of Japan insists that the wording of the Chairman of the Committee be the correct version, and asks that this statement be placed in the Record of the Conference.

Original German: Mr. ADAMY *(Workers' adviser and substitute delegate, Germany)* – The World Conference on Human Rights that is meeting in Vienna makes it clear that the instruments for the guarantee of human rights have to be further developed and strengthened. But within the context of our terms of reference, we also have to make sure that there are no reductions made in the universality and binding nature of the central standards respecting human rights. This is particularly valid as regards what I am sure is the most of important of all international labour Conventions, namely the Freedom of Association and Protection of the Right to Organize Convention 1948, (No. 87). And yet recently it was specifically against this instrument that the criticisms of the Employers were directed in the Committee on Application of Standards. This was very clear again this time. Quite obviously they want to make this central international standard conditional, and they are calling jurisprudence into question as regards the scope of the right to strike.

The criticisms by the German Employers' member in this Committee in particular concentrate on the points on which my country has also had problems in observing this Convention. It is therefore not surprising if the Government representative of my country in this Committee also tries to make conditional this human rights international labour Convention, and if he largely shares the position adopted by the Employers' group in this Committee. They have together been basing their criticisms recently on the fact that Convention No. 87 does not contain any express guarantee of the right to strike. However, this is not something which is true only for the ILO but is the case also with the Constitution of a number of member States. For instance, it is also the case with the Constitution of my country.

The supervisory machinery in the ILO, early on recognized, in a practice that goes back 40 years, that strikes are a central premise and a means of making it possible for workers and their trade unions to ensure that collective agreements be implemented and applied. In order to protect the activities of trade unions, you have to have the right to strike.

The Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association have established a number of basic principles on freedom of association which in particular define the conditions and circumstances under which the right to strike can be banned or limited. It is not true that these Committees recognize a practically unlimited right to strike as has been suggested here by the representative of the Employers. On the contrary, they have tried to establish a proper balance between the opposing interests in play and at the same time avoid an unjustified restriction of the activities of trade unions.

The Committee on Freedom of Association in the meantime has developed a body of important rulings which shows, as does the work of the Committee on the Application of Conventions and Recommendations, that the Employers' group has for many years agreed with the basic principles of this freedom of association. However, since the end of the 1980s and the end of the Cold War, this consensus has been questioned more and more by the Employers in the Conference Committee.

However, the justifications that are given do not really stand up to analysis. The Vienna Convention on the Law of Treaties is referred to more and more in order to allow greater intervention by the State in the exercise of the right to strike, and greater influence over case law within the ILO. In fact, however, and here I decisively disagree with the Employers' spokesman, the Vienna Convention on the Law of Treaties is not applicable to international organizations like the ILO if they have their own rules of interpretation. There is no principle of general inter-

national law that standards adopted by international organizations must be interpreted according to the rules of the Vienna Convention. Article 5 of that Convention, for instance, says that its own rules do not take precedence over the corresponding interpretative rules of international organizations. The case law developed over decades in the ILO therefore takes precedence over the corresponding provisions of the Vienna Convention.

But even if one invokes the rules of the Vienna Convention, then according to Article 31, paragraph 3, it matters not whether all the contracting parties have explicitly agreed to the interpretation of the Convention concerned. On the contrary, silence can be taken as consent. According to article 31 of the Vienna Convention it is necessary to take into account "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

For many years, there has been absolutely no contradiction by the Employers on the Conference Committee as regards the existing case law. On other supervisory bodies, like the Committee on Freedom of Association, they also support the principle of freedom of association and the practical way it is implemented.

Furthermore, the following facts also lead us to believe that the principles of freedom of association have become part of general international law. Firstly, in 1986 the United Nations Commission on Human Rights recognized as valid the interpretation by the ILO bodies of the right to strike. Secondly, the ILO Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa designated many principles of freedom of association as part of customary international law. And, thirdly, the Legal Adviser, in his statement on article 37, paragraph 2, of the ILO Constitution drew attention to the fact that the long-standing interpretation of the Committee on Experts – which has not been contradicted – could become binding.

This incontravertible principle of international law must be taken into account. It would also be wrong to accept the principle that an interpretation of ILO Conventions that is lenient on the States Parties must be chosen. This is something that can hardly be acceptable for international organizations and certainly not for Conventions on human rights. Otherwise the universality and the binding nature of human rights precepts would be called in question. The historical method of interpretation used by the Employers is also unconvincing. For example, the critical comments of the Employers shortly after the adoption of Convention No. 87 are today overinterpreted. Even at that time they could not be considered as a basic questioning of the right to strike. With regard to Convention No. 35, the Employers on this year's Committee relativized an historical interpretation themselves in the case of Chile. We very often have difficulties with historical interpretations because, as we all know, when standards are being established political compromises are frequently reached outside the committee room and therefore do not appear in any minutes or records. And this is something mentioned by the Legal Adviser in the opinions I have already referred to.

Above all, it should be borne in mind that the Vienna Convention – which is constantly being referred to by the Employers – views the historical method merely as a source of supplementary assistance. According to Article 32 of the Vienna Convention, this method can only have significance if the meaning of the rules for interpretation is ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. This certainly does not apply to the decision-making practice in the ILO supervisory bodies. Hence, even under the Vienna Convention there is no basis for a strong emphasis on historical interpretation.

We should neither directly nor indirectly question the methods and case law of the ILO supervisory machinery. We must ensure that the approach adopted in assessing the implementation of standards is not influenced by ideas originating in a specific social or economic system. The law applied in some industrialized countries cannot and should not therefore become a standard for the interpretation of Conventions.

After the collapse of the former socialist bloc, we must in no way give in to the temptation to misuse the supervisory system for one-sided political and economic purposes.

The Committee of Experts, because of the status, knowledge and independence of its members, deserves the greatest attention and respect. By contrast with the Committee of Experts, the Conference Committee consists not of independent experts but of representatives of the different parties affected by the implementation of the Conventions. However, this certainly does not mean that the comments by the Conference are expressions of views and considerations without moral and political value. On the other hand, we should not overstress the importance of the Conference Committee, since otherwise in the long term we would be running the risk that majority decisions, taken by that body which is politically constituted, could conflict with the principle of independent proceedings according to due process. It should not be forgotten that numerous difficulties were encountered when the Committee's Report was approved. We should therefore decide jointly to ensure that the conclusions of the Committee of Experts, and the supervisory and interpretation method used, are in no way watered down.

If we do not wish to endanger the credibility of this international organization, then we must speak out against any relativization of human rights in the world of work as elsewhere. This applies particularly to the Committee of Experts.

Fortunately, the Chairman of that Committee, Mr. Ruda, has once again emphasized in the Conference Committee that the experts were expressly guided by the principles of objectivity, impartiality and independence and in this we emphatically support the Committee.

As the spokesman of the Employers' group emphasizes, we are in no position, when it comes to violations of international standards, to guarantee a solution, and we should rather aim at extending our procedures rather than at reducing them, otherwise we will lose our credibility.

Mr. POTTER *(Employers' adviser and substitute delegate, United States)* – I had not intended to participate in this general discussion but because of the unfortunate attack on the representative of the Employers' group characterizing that representative as a German Employer, I want to make it clear that the

points of view that Mr. Wisskirchen articulated are those of the entire Employers' group. The last few years have witnessed a substantial shift in world relations, particularly in the demise of the struggle between east and west. That earlier conflict involving diametrically opposed views cast a shadow on the work of our Conference Committee and the supervisory machinery generally. Disagreements that the Employers have always had with just a few interpretations by the Experts of the ILO Conventions, particularly concerning the right to strike, were muted in a show of solidarity to preserve the supervisory machinery. The support of the supervisory machinery was important then and still is. For the most part the Conference Committee follows the findings and interpretations of the Experts, but this does not mean that the Conference Committee is a rubber stamp for the Experts. While the report of the Experts is indispensable to the Conference Committee's work, the Conference Committee could not fulfil its obligations under article 7 of the Standing Orders without conducting its own independent evaluation. More often than not, the Conference Committee's conclusions and those of the Experts are consistent.

In the context of a number of cases this year, for example the cases of Ecuador, Colombia and Pakistan, to name a few, the Employers have set out in some detail the reasons why we believe the Experts' interpretations concerning the right to strike is not completely correct. The social and legal matter of the right to strike is not contemplated by the specific language of Conventions Nos. 87 and 98 or the respective legislative histories. Moreover, reliance on the decisions of the Committee on Freedom of Association is not appropriate, because its decisions are based on general principles and are not limited to the terms and legislative histories of Conventions Nos. 87 and 98 as interpreted and applied in accordance with articles 31 and 32 of the Vienna Convention. But reliance on the Vienna Convention is not essential to reach this conclusion, because Conventions simply apply traditionally and generally accepted customary rules of interpretation of international treaties.

Perhaps more importantly the exercise of the right to strike does not take place in a vacuum. By its very nature the exercise of the right to strike not only affects the employer but the community as well. Strikes take place in different legal contexts, stages of economic and industrial development and economic circumstances. This has been the consistent position of the Employers' group since 1953. The Experts "one-size fits all" approach, particularly with regard to essential services in the public service, simply does not take into account these realities and the absence of any express provision of the right to strike in Conventions Nos. 87 and 98. Instead of simply reiterating past pronouncements on the right to strike, the Experts need to take these legal and economic factors into account and re-examine the right to strike both in the context of observations in particular cases, and in their 1994 survey on Convention Nos. 87 and 98.

The PRESIDENT (Mr. GRAY) – May I take it that the report of the Committee on the Application of Conventions and Recommendations is adopted by the Conference?

(The report is adopted.)

(The Conference adjourned at 1 p.m.)

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Convention and that dealt with unconfirmed situations, unrelated to objectives of compliance with the Conventions.

Concluding remarks

74. The Worker members wished to respond to the comments of the Employer members and certain Governments regarding the right to strike and the impartiality of the members of the Committee of Experts. They felt that they could not leave unanswered the Employer members' attacks on the principles laid down by the ILO's supervisory bodies regarding the right to strike under Convention No. 87. For some years it had become the established practice for the representatives of the Workers and Employers to discuss matters of mutual interest with the Committee of Experts. The healthy and entirely transparent collaboration that had thus developed testified to the reliance of all sides on the intellectual rectitude and the impartiality of the members of the Committee of Experts. The Committee of Experts was a body of legal experts from all horizons and from all juridical cultures who were appointed by the Governing Body for a renewable mandate of three years. Did that mean that there was a crisis of confidence vis-à-vis the Governing Body, the Worker members wished to know? They recalled further that although the right to strike was not referred to explicitly in an ILO Convention, as was the case in many countries' legislation, that did not prevent the existence of such a right from being recognized on the basis of several international legal instruments that considered the right to strike as a corollary of freedom of association and the right to bargain collectively. In its Articles 3 and 10, Convention No. 87 asserted the right of workers' and employers' organizations "to organize their administration and activities and to formulate their programmes". Based on those provisions, the Committee on Freedom of Association (since 1952) and the Committee of Experts (since 1959) had on numerous occasions reaffirmed that the right to strike was a fundamental right of workers and of their organizations. Those supervisory bodies had defined the sphere of application of that right and had drawn up a set of principles setting out the scope of the Convention. It would appear that the Employer members, while not yet actually contesting the right to strike, did contest its scope. Yet the principles enunciated also respected the right of enterprises and did not condone wildcat, violent or political strike action. They were simply a well-defined tool that provided workers whose rights were flouted with a weapon of last resort. Since the Committee on Freedom of Association, too, was established by the Governing Body, the Worker members questioned once again whether there was a crisis of confidence vis-à-vis that institution.

75. The Employer members expressed appreciation of the comments made by the Government and Worker members during the general discussion, in particular the statement made by the Worker member of Pakistan. In response to the final remarks of the Worker members, the Employer members wished to clarify that they were only asking for the tripartite governance of the supervision of ILO standards to be restored in conformity with article 23 of the Constitution of the ILO and article 7 of the Standing Orders of the International Labour Conference. They emphasized that they were not questioning the valuable role of the Committee of Experts, but only certain of its interpretations. In particular, as was well-known, the Employer members had for many years been raising questions with regard to the detailed regulation of the right to strike, to which the Committee of Experts had never responded. The Employer members added that they were by no means questioning the right to strike itself, but merely the detailed regulation thereof by the supervisory bodies. The supervisory process had engaged in a progressive extension and detailed elaboration of the regulation of the right to strike. He recalled that the Committee of Experts had first referred to the right to strike in an observation in 1961 and that the legislative history of Conventions Nos 87 and 98 demonstrated that attempts to include explicit reference to the right to strike in their texts had been rejected. Reliance on the Committee on Freedom of Association was not necessarily appropriate in support of the examination of the

application of ratified Conventions by the Committee of Experts. The Employer members reaffirmed their support for the work of the supervisory system and the important fact-finding, examination and conclusions of the Committee of Experts. However, it was not in accordance with the tripartite governance of the supervisory mechanism to silence one of the tripartite constituents when the latter raised valid concerns on a minority of the comments made by the Committee of Experts.

The reply of the Chairperson of the Committee of Experts

76. The Chairperson of the Committee of Experts emphasized first of all that the Committee of Experts consciously endeavoured to be scrupulously impartial and to confine itself to the facts as presented in the file. The Committee of Experts did realize that the government and the social partners, acting in all good faith, naturally viewed an incident from their particular vantage point. As such, the Committee of Experts sought to separate advocacy, opinion and allegations from facts. Referring to the obligation of the government to communicate its report to employers' and workers' organizations to allow them the opportunity to comment, the speaker underlined that somewhat similarly, if the Committee of Experts received a comment from an employers' or workers' organization alleging noncompliance with a Convention, the Experts forwarded that complaint to the government and requested a reply. If a reply was received from the government, the Committee of Experts did take it into account in its observation or direct request.

77. With regard to the right to strike, the speaker emphasized that this right had been recognized by the Committee of Experts for over 50 years. The last General Survey on freedom of association was written in 1994, before any member of this year's Committee of Experts was appointed. In reviewing her 15 years on the Committee of Experts, she could not recall an instance where the Committee of Experts had extended its jurisprudence regarding the right to strike. To some extent, the Committee of Experts responded to issues that the parties had raised. It may be that the right to strike had appeared more frequently in observations on Convention No. 87, but that did not arise from any intention of the Committee of Experts to extend its jurisprudence in this area.

78. Finally, she underlined that the Committee of Experts was the highest impartial body charged with a supervisory function within the ILO. It was established to be a neutral, impartial body in an organization with a tripartite governance system. The Conference over the years had created ways in which the voices of the parts of this tripartite system could be heard, including ways in which their views on the Committee of Experts' report and the General Survey were heard, and published. The traditional separation of the Committee of Experts' report and General Survey from the views expressed by governments, employers and workers on the same issues had served the Organization well over the years. She urged the Committee to think most carefully before proposing a change, which might seem small, but which could change the delicate balance that had enabled this unique tripartite organization to move its valuable work forward for more than 90 years.

The reply of the representative of the Secretary-General

79. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion. The Chairperson of the Committee of Experts had already responded to certain matters raised concerning the report of the Committee of Experts and its General Survey. Turning to the matters falling within the Office's responsibility, she wished to confirm, in relation to the question raised by the Libyan Arab

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80. The Government member of Norway emphasized the need to strengthen labour inspection and social dialogue in the process of the implementation of the fundamental Conventions at the national level. She drew attention to the need to focus on women workers, workers in the informal economy and vulnerable groups of workers, as well as issues of equity and non-discrimination. Greater attention should also be paid throughout the work of the ILO to the comments of the supervisory bodies, and the social partners should play a more active role from the design stage in technical cooperation projects.

81. A Worker member of the Bolivarian Republic of Venezuela indicated that his country recognized fundamental workers' rights in the Organic Labour Act, which gave effect to the eight fundamental Conventions, and that it had achieved economic growth for the past few years while recognizing all the fundamental principles and rights at work. Collective agreements had been, and were being, negotiated in many sectors, and working hours had been reduced to 40 a week, with two rest days. Another Worker member of the Bolivarian Republic of Venezuela added that, through the establishment of workers' rights in law, the new model of production developed with the participation of the workers and an equitable distribution of wealth, her country was now recognized as one of the Latin American countries with the lowest levels of inequality.

Freedom of association and collective bargaining

82. The Employer members, with reference to the comments by the Chairperson of the Committee of Experts concerning the discussion of the right to strike in relation to the 1994 General Survey, emphasized that, as indicated in the present General Survey, they had clearly articulated their objections during the 1994 discussion to the interpretation by the Committee of Experts of the right to strike. While the Employer members acknowledged that a right to strike existed, as it was recognized at the national level in many jurisdictions, they did not at all accept that the comments on the right to strike contained in the General Survey were the politically accepted views of the ILO's tripartite constituents. As the Employers' group had consistently highlighted year after year, they fundamentally objected to the Committee of Experts' opinions concerning the right to strike being received or promoted as soft law jurisprudence. There was no mention of the right to strike in the text of Convention No. 87, and the determinative body to decide such rules recognized by the ILO was the Conference, not the Committee of Experts. Under article 37 of the ILO Constitution, only the International Court of Justice (ICJ) could give a definitive interpretation of international labour Conventions. The situation was exacerbated because General Surveys were important and were published and distributed worldwide without any prior approval by the Conference Committee. The fundamental Conventions were embedded in many international processes and instruments, such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and ISO 26000. The Employer members therefore objected in the strongest terms to the interpretation by the Committee of Experts of Convention No. 87 and the right to strike, to the use of the General Survey with regard to the right to strike and to being placed in such a position by the General Survey. They indicated that, to maintain the credibility and coherence of the Employers' group, their views and actions in all areas of ILO action relating to the Convention and the right to strike would be materially influenced.

83. In more general terms, the Employer members agreed with the comments of the Committee of Experts that, in the absence of a democratic system in which fundamental rights and principles were respected, freedom of association could not be fully developed. There were situations of the failure to apply Convention No. 87 outlined in the General Survey, such as the denial of the right to organize to certain categories of persons, restrictions on the holding of free elections in representative organizations, restrictions on the categories of persons who could hold office in organizations, restrictions on the

independence and functioning of organizations, the requirement of excessive numbers of members to establish organizations, which went to the heart of the Convention and were also experienced by some employers. Moreover, the Committee of Experts had rightly emphasized that employers were also protected by the freedom of association instruments.

84. An Employer member from Denmark noted that he represented public employers, although he did not represent the State, and that he wanted to comment on the impact of Conventions Nos 87 and 98 on public employers. The Committee of Experts had created arbitrary distinctions in interpreting the right to strike, which forced it to make special rules for the public sector. Public employers would not follow the creative inventions of the Committee of Experts, as the right to strike depended on national legislation, not on international ILO Conventions. The Committee of Experts' interpretation of Convention No. 98 was problematic in that it allowed minority unions to conclude agreements when no union comprised a majority of workers. While minority unions could negotiate agreements, Employers retained the right to refuse.

85. The Worker members, with reference to the remarks of the Employer members, reaffirmed that the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87. Moreover, the Committee of Experts had once again advanced a well thought-out argument on why the right to strike was quite properly part of fundamental labour rights. It was important to recall that the Committee of Experts was a technical body which followed the principles of independence, objectivity and impartiality. It would be wrong to think that it should modify its case law on the basis of a divergence of opinions among the constituents. While the mandate of the Committee of Experts did not include giving definitive interpretations of Conventions, for the purposes of legal security it nevertheless needed to examine the content and meaning of the provisions of Conventions and, where appropriate, to express its views in that regard.

86. The Worker members said that the right to strike was part of the ordinary exercise of freedom of association. Without that right, workers would not be in a position to exert any influence in collective bargaining. Questioning the right to strike as an integral part of freedom of association would mean that other rights and freedoms were meaningless in practice. The fundamental labour rights and their interpretation within the context of the supervisory process were essential elements in ensuring the durability of social rights and civil liberties.

87. The Worker member of Peru added that the right to strike was sacred, inalienable and non-negotiable and thousands of workers had lost their lives or suffered torture defending that right. The Worker member of Brazil said that the right to strike was as important as the right to work and the right to decent wages.

88. The Worker members welcomed the reference in the General Survey to their concerns on the direction taken by the case law of the European Court of Justice regarding the relationship between the right to strike and the free movement of services. They expressed pessimism concerning the so-called Monti II Regulation and noted that European case law was running counter, not just to the principles of freedom of association, but also to the right to collective bargaining. Although the Committee of Experts had noted that its mandate was limited to the shortcomings of member States and did not extend to regional organizations, national policy could not possibly be divorced entirely from regional policy. The question therefore arose as to whether the supervisory machinery should also cover problems at the regional level, and not only in Europe.

89. Several Worker members referred to restrictions on trade union rights in their countries. The Worker member of the United States indicated that, in the United States in 2011, the authorities in certain states had used budget deficits resulting from the financial crisis to

justify efforts to cut the wages and benefits of teachers and other public sector workers and to eliminate or restrict their collective bargaining rights. Employers in the United States were extremely hostile to trade unions and continued to use anti-union tactics to put workers under pressure not to join unions. In the context of continued high unemployment and weak economic growth, certain private sector employers had used lockouts to pressure workers to accept wage and benefit concessions, greater numbers of temporary workers and subcontracted work. It was also noted that in Senegal, civil service status, reserved for a minority, removed collective bargaining and consultation rights from workers, who were not therefore able to negotiate their pay. In the Republic of Korea, trade union law had recently been revised in a retrogressive manner. Workers who took the lead in union activities and collective action risked dismissal, imprisonment or lawsuits for the compensation of damage. Certain workers' confederations had been repeatedly threatened with the cancellation of their registration because of the high numbers of precarious workers in their membership, and when subcontracted workers tried to exercise the right to organize, the subcontract could be cancelled, which had the same effect as collective dismissal.

90. Several Government members recalled that the right to strike was well established and widely accepted as a fundamental right. The Government member of the United States expressed appreciation of the Committee of Experts for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike. The Government member of Norway added that her country fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87.

Forced labour

91. The Employer members observed that Conventions Nos 29 and 105 remained extremely relevant and they welcomed the comprehensive information provided in the General Survey on their application in law and practice. However, there was no room for complacency, as problems still existed, particularly in terms of a lack of commitment to taking effective action for the elimination of forced labour and the mechanisms for the enforcement of its prohibition. Moreover, the Employer members noted a tendency in the General Survey to expand the definitions of forced labour to new areas, such as prison labour and overtime. They warned that such extensions ran the risk of inadvertently trivializing the problem. In the case of prison labour, they expressed the view that the definition provided by the Committee of Experts of the notion of voluntariness was too narrow. Moreover, while an approximation to a free labour relationship could be an indicator of an absence of forced labour in those circumstances, there were other viable indicators. It would probably be advisable to define more closely the limits of voluntariness. In relation to overtime, it should be emphasized that, although excessive overtime hours did not constitute decent work, nor did they amount to forced labour if the worker was free to leave the employment relationship. With reference to the prohibition by Convention No. 105 of forced labour as a punishment for having participated in strikes, they added that the Convention was not an instrument for regulating strikes, nor did it prohibit sanctions for strikes, but only the exaction of forced labour as a sanction for having participated in strikes, whether or not the strikes were legal.

92. The Worker members said that forced labour, which was the antithesis of decent work, was not limited to certain countries or sectors, but was to be found throughout the world in such forms as human trafficking, new forms of migration, the privatization of prisons, and even in the progress of "quid pro quo" social security policies (under which workers who were unemployed or living in poverty had to perform work of public interest in exchange for their benefits).

Elimination of child labour

93. The Employer members welcomed the first General Survey to cover Convention No. 182, and the first for over 30 years on Convention No. 138. It was timely to look at developments in relation to the elimination of child labour and the wealth of information provided on the implementation of the two Conventions was appreciated. It was clear that child labour was a problem that affected the future of nations. Most children who were engaged in work had little opportunity to pursue their education and training, which meant that in later life they would find it very difficult to obtain anything other than work requiring low skill levels and offering low rates of remuneration. Action to combat child labour should therefore be closely related to education and training measures. They noted the many examples of the efforts made by ILO member States, in both law and practice, but observed that the measures taken were often insufficient. In particular, legislation was ineffective in prohibiting child labour in the informal economy, where it was most prevalent. In certain countries, the legislation on child labour failed to cover such sectors as domestic work, agriculture and commerce. Moreover, although one of the principal means of enforcing the prohibition of child labour was through labour inspection, the respective services often lacked the necessary material and human resources and specific training. It should be recalled that the social partners had an important role to play in combating child labour, but that employers, in particular, were often not sufficiently consulted.

94. The Employer members called for an immediate end to the involvement of state institutions in many of the worst forms of child labour, including the compulsory recruitment of children into national armed forces, the compulsory mobilization of children in the context of school programmes and the complicity of government officials in the trafficking of children.

95. The Worker members acknowledged that significant progress had been made in a range of countries, particularly in relation to the worst forms of child labour, and that many of the time-bound programmes implemented had been effective. However, according to the 2010 Global Report, a very large number of children worldwide continued to work (215 million), many under the age of 15 (153 million) and in hazardous forms of work (116 million), particularly in the informal economy, agriculture and domestic work. The Committee of Experts had rightly emphasized the new or additional risks arising out of the globalization of the labour market, the ongoing problem of human trafficking, the recruitment of child soldiers in conflict zones and the role of the Internet in encouraging sex tourism and the sexual exploitation of children.

Equality, non-discrimination and equal remuneration

96. The Employer members observed that discrimination at work was not only a violation of a human right, but that it also hindered the development of workers and the utilization of their full potential, and therefore constituted a barrier to the promotion of sustainable enterprises. A diverse workforce enabled employers to recruit the most talented workers from a broad pool of candidates and was accordingly beneficial to enterprises and enabled the workforce to offer its whole range of experiences, perspectives and cultural understanding. However, they observed that the lack of implementation of the anti-discrimination Conventions was primarily related to societal perceptions based on historical attitudes and stereotypes which were difficult to change and sometimes required a long period of adaptation. In view of the consequences of anti-discrimination standards on employers' activities, they considered that the related policies should not place a burden on enterprises which might impair their sustainability and their ability to create jobs.

97. With regard to the principle of equal remuneration for work of equal value, the Employer members underlined the importance of flexibility in the application of Convention No. 100 at the national level. It should be recalled that governments were entitled to use any combination of means at their disposal for the application of the principle, although they were not necessarily required to do more than legislate. The value of collective bargaining in that respect was that it allowed workers and employers to take into account business and employment needs, while drafting equal pay plans and anti-discrimination measures. With reference to the concept of equal remuneration, they observed that the dilemma lay in the fact that there was no generally agreed correct system for establishing the value of a job. The comments of the Committee of Experts that factors such as skills, responsibility, effort and working conditions were relevant in determining the value of jobs, and that the overall value of a job could be determined only when all factors were taken into account, left a certain ambiguity in the concept. Such ambiguity highlighted the difficulty of attempting to create a "one-size-fits-all" definition of equal value, and suggested that greater discretion should be allowed to make such determinations at the national level.

98. The Employer members added, with regard to the monitoring and enforcement of Conventions Nos 100 and 111, that neither Convention required a shifting of the burden of proof to the employer, which had proven to be an extremely heavy bureaucratic burden for employers in countries where it existed. They emphasized that much had been done by the business community to apply the principles of equality set out in the two Conventions, especially through collective agreements, the adoption of voluntary codes of conduct, wage mapping and action plans. They therefore called for consistent and flexible anti-discrimination standards.

99. The Worker members welcomed the special attention paid by the Committee of Experts to the wage gap between women and men, which could only be tackled if the factors underlying segregation in the labour market were addressed at the same time. With regard to Convention No. 111, they recalled that Article 1 of the Convention did not envisage any specific restrictions and applied to any discrimination which had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. However, in practice, many countries established limitative lists, or limited the scope of application to their own nationals. It was becoming increasingly important to extend the scope of the Convention to combat new forms of discrimination, such as genetic discrimination and discrimination based on lifestyle choice. It was also important to prohibit discrimination based on trade union activities and to establish specific protection measures, such as the reversal of the burden of proof and employment protection through special judicial and administrative procedures.

Final remarks

100. The Employer members thanked the Committee of Experts and were able to support 95 per cent of the General Survey. They noted the rich discussion and the obvious interest in and recognition of the importance of the fundamental Conventions.

101. The Worker members, with reference to the comments by the Employer members concerning the absence of any reference in the General Survey to the concept of sustainable enterprises, said that emphasis should also be placed on durable and decently remunerated employment, the right to social protection in the broad sense of the term and the guarantee of quality jobs that respected workers, their health, security and family environment. All those rights depended on the effective application of the eight fundamental Conventions and were beneficial for employers and governments through the promotion of greater social cohesion.

102. The Worker members re-emphasized the crucial nature of the right of freedom of association and collective bargaining to the application of the other Conventions. The eight fundamental Conventions dealt with human rights and were essential instruments for developing democracy. Moreover, it was important to reaffirm that the right to strike was clearly derived from Convention No. 87 and was an obligatory corollary of freedom of association. The Committee of Experts was a technical body operating in accordance with the principles of independence, objectivity and impartiality. It could therefore not modify its jurisprudence in light of diverging and evolving points of view. In that respect, the Committee of Experts had indicated in its report to the Conference in 1990:

> The Committee has already had occasion to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function …, the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. … The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation.

103. The Worker members, turning to the substance of the General Survey, strongly endorsed the appeal for special attention to be devoted to vulnerable categories of workers, notably domestic workers, migrant workers and informal sector and agricultural workers, and to the growing problems they faced in exercising their fundamental rights and freedoms at work. Concerning atypical forms of work, the Worker members requested for a tripartite meeting of experts to be organized on the subject by the ILO. With regard to the elimination of all forms of forced labour and, although Conventions Nos 29 and 105 were among the most widely ratified, they recalled that various forms of forced or compulsory labour continued to exist. Governments should therefore develop a comprehensive juridical policy framework to combat all forms of forced labour, which not only established punitive measures, but also encompassed the protection of victims and compensation for the damage suffered. They added that the fundamental principle of gender equality and the elimination of discrimination in employment was a human right to which all men and women were entitled, and that it had an important bearing on the exercise of all other rights. A discussion should perhaps be held on new forms of violation of equality, with a view to the possible development of a modern instrument reflecting changes in society and comprising a list of new forms of discrimination and suggestions as to how they might be remedied.

104. In conclusion, the Worker members encouraged the ILO to pursue its campaign to promote the ratification and observance of the fundamental Conventions with a view to establishing, by 2015, a social framework that was conducive to peace, stability, economic development, prosperity and social justice.

D. Compliance with specific obligations

105. The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.

106. The Employer members indicated that the supervisory system depended on reports by the governments on compliance with Conventions. The system could not function without their regular submission. They noted the institutional and infrastructural constraints due,

for instance, to political unrest, which resulted in lack of human and financial resources and communications between ministries. The Office could provide relevant technical assistance and hoped that the governments would avail themselves of this possibility. They stated that the governments had to consider their responsibility for reporting upon consideration of ratifying Conventions. The group observed a general improvement compared to last year in the situation of discharge by member States of their reporting obligations under articles 22 and 35 of the ILO Constitution, as indicated in the General Report of the Committee of Experts. They, however, emphasized that further efforts were needed.

107. The Worker members emphasized the fact that the obligation to send reports before the deadline and with useful information had to be respected by all governments. The regularity of reporting and the quality of replies influenced greatly the work of the Committee of Experts. If the reports were of high quality, the supervisory mechanism could attain its objectives, which was to the maximum benefit of workers and the defence of their rights. The progress observed at the moment as regards sending reports was insufficient and the governments concerned had to take all measures necessary to fulfil their obligations in this regard.

108. In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.

109. In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 31 (failure to supply reports for the past two years or more on the application of ratified Conventions), 37 (failure to supply first reports on the application of ratified Conventions), 40 (failure to supply information in reply to comments made by the Committee of Experts), 89 (failure to submit instruments to the competent authorities), and 98 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

110. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.

111. The Committee noted from the report of the Committee of Experts (paragraph 87) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Cape Verde, Central African Republic, Kenya, Mongolia and Qatar. In addition, the Conference Committee received information about the submission to parliaments from many governments and in particular from Cambodia, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan as well as the ratification of the Maritime Labour Convention, 2006, by Saint Kitts and Nevis; and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), by Togo.

Failure to submit

112. The Committee noted that in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 90th Session in June 2002 to the 99th Session in June 2010, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.

113. The Committee noted the regrets expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.

114. The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.

115. The Committee noted that 33 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Bahrain, Bangladesh, Belize, Colombia, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, Fiji, Georgia, Guinea, Haiti, Iraq, Ireland, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan** and **Uganda**. The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

116. In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2011 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent (compared with 67.9 per cent for the 2010 meeting). Since then, further reports had been received, bringing the figure to 77.4 per cent (as compared with 77.3 per cent in June 2011, and 77.6 per cent in June 2010).

Failure to supply reports and information on the application of ratified Conventions

117. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Chad, Djibouti, Equatorial Guinea, Grenada, Nigeria, Sierra Leone** and **Somalia**.

118. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

State	Conventions Nos
Bahamas	– since 2010: Convention No. 185
Equatorial Guinea	– since 1998: Conventions Nos 68, 92
Guinea-Bissau	– since 2010: Convention No. 182
Kazakhstan	– since 2010: Convention No. 167
Kyrgyzstan	– since 1994: Convention No. 111 – since 2006: Conventions Nos 17, 184 – since 2009: Conventions Nos 131, 144 – since 2010: Conventions Nos 97, 157
Nigeria	– since 2010: Convention No. 185
Sao Tome and Principe	– since 2007: Convention No. 184
Seychelles	– since 2007: Conventions Nos 147, 161, 180
United Kingdom (St Helena)	– since 2010: Convention No. 182
Vanuatu	– since 2008: Conventions Nos 87, 98, 100, 111, 182 – since 2010: Convention No. 185

119. It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

120. In this year's report, the Committee of Experts noted that **43** governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **537** cases (compared with 669 cases in December 2010). The Committee was informed that, since the meeting of the Committee of Experts, 15 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

121. The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2011 from the following countries: **Bahamas, Barbados, Burkina Faso, Burundi, Chad, Comoros, Democratic Republic of the Congo, Denmark** (Greenland), **Djibouti, Equatorial Guinea, Ghana, Grenada, Guinea, Guyana, Haiti, Iceland, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Nigeria, Pakistan, San Marino, Sao Tome and Principe, Sierra Leone** and **Slovakia**.

122. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Bahrain, Burkina Faso, Chad, Denmark** (Greenland), **Iceland, Ireland, Nigeria, Pakistan, Seychelles** and **Sudan**.

Supply of reports on unratified Conventions and Recommendations

123. The Committee noted that **160** of the **282** article 19 reports requested on fundamental Conventions had been received at the time of the Committee of Experts' meeting. This is 56.23 per cent of the reports requested.

124. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Afghanistan, Cape Verde, Guinea-Bissau, Samoa, Sierra Leone, Somalia, Turkmenistan** and **Vanuatu**.

Communication of copies of reports to employers' and workers' organizations

125. Once again this year, the Committee did not have to apply the criterion: "the Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

Application of ratified Conventions

126. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 61 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 72 such cases, relating to 54 countries; 2,875 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.

127. This year, the Committee of Experts listed in paragraph 64 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 325 such instances in 130 countries.

128. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

129. The Government members of **Afghanistan, Bahrain, Bangladesh, Burkina Faso, Cape Verde, Chad, Colombia, Congo, Denmark** (Greenland), **Ethiopia, Ghana, Guinea, Guyana, Iceland, Ireland, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sudan, Suriname** and **Uganda** had promised to fulfil their reporting obligations as soon as possible.

Special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29)

130. The Committee held a special sitting concerning the application by Myanmar of Convention No. 29, in conformity with the resolution adopted by the Conference in 2000. A full record of the sitting appears in Part Two of the report.

Participation in the work of the Committee

131. The Committee wished to express its gratitude to the 43 governments which had collaborated by providing information on the situation in their countries.

132. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Bahamas, Barbados, Belize, Burundi, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea-Bissau, Haiti, Iraq, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Mongolia, Mozambique, Rwanda, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Somalia, Tajikistan, Turkmenistan, United Kingdom** (St Helena) and **Vanuatu**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.

133. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Bahamas, Belize, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Saint Lucia, Samoa, Somalia** and **Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Discussion of the list of individual cases to be considered by the Committee

134. With regard to the adoption of the list of individual cases for discussion by the Committee in the second week, the Worker members emphasized the fact that only the Workers and the Government representatives were present at the sitting on Friday, 1 June 2012, after 8.30 p.m. They wished to provide some explanation regarding the attempts made in reaching an agreement on a list of 25 individual cases. Unfortunately this had not been possible, since the conditions put forward by the Employer members were unacceptable. The Worker members considered that it was not their responsibility to explain those conditions. As to the substance of the matter, the issue raised by the Employer members was identical to the one that they had referred to previously, namely that the Committee of Experts had taken the initiative to provide explanations concerning the right to strike in the General Survey, and that was something that the Employer members could not accept. The Worker members considered, however, that the Committee of Experts worked in complete autonomy. As the Committee of Experts had emphasized in its annual report, it was "an independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States". It was not possible to assess its independence in a different manner than had previously been done. The fact was that it had not been possible to reach consensus between the Employer members and the Worker members. The Worker members would have liked to propose a list including cases to which they attached particular importance and which raised serious issues for the workers of the countries concerned. It had unfortunately proven impossible to reach an agreement with the Employer members regarding such a list. The Worker members deplored the situation because it showed that tripartism and social dialogue did not always enable positive and constructive solutions to be found. Consequently, they had looked for a practical solution to this impasse and had proposed a "default list", in other words a list drawn up in the absence of one negotiated and approved by the groups. They had proposed starting with the examination of the double footnoted cases, following the French alphabetical order from the letter K onwards: Mauritania (Convention No. 81); Dominican Republic (Convention No. 111); Senegal (Convention No. 182); Fiji (Convention No. 87); and Guatemala (Convention No. 87). The Worker members had also proposed to examine 20 cases following the same alphabetical order on the basis of the preliminary list. The Worker members reaffirmed that this list was not the one they would have preferred and that it was a "default list". They expressed the wish to have the possibility of making other comments at the start of the examination of individual cases. In conclusion, the Worker

members emphasized the fact that they had not created this situation. They felt that they were victims of a situation which had been shaped by others, one in which they had not played an active role.

135. The Chairperson invited the Government members to make comments regarding the statement of the Worker members and the situation faced by the Committee.

136. The Government member of Zimbabwe informed the Committee that it would not be appearing before the Committee in the case of a "default list".

137. The Government member of the United States stated that she was beyond disappointment and foresaw that many other governments would wish to make statements at a later stage. She wondered whether the fact that the Employer members were no longer present in the room, meant that they would not participate in the discussion of a "default list".

138. The Government member of Brazil, speaking on behalf of GRULAC, expressed his deep frustration about the whole situation, which was offensive and disrespectful to governments. He recalled the statements that had been previously made by the Government group and GRULAC underlining the importance of having a list of individual cases on time, and considered that still not having such a list severely hampered the constitutional functions of the ILO.

139. The Government member of Greece supported the statement made by the Government member of Brazil and, noting that the Employer members were not present, requested indications from the Office on the way forward.

140. The Worker members requested clarifications regarding the manner in which the outcome of the Committee's discussion would be reported to the Recurrent Item Committee. In the absence of joint conclusions, the groups could consider submitting their conclusions separately.

141. The representative of the Secretary-General in reply to the various questions raised, indicated that the Office had first to reflect on possible ways forward. In the afternoon, the Committee had agreed on the brief summary of the discussion on the General Survey. The revised version of this document (document D.8(Rev.), which included the comments made by the Worker and Employer Vice-Chairpersons, would be communicated to the Recurrent Item Committee on Saturday afternoon, 3 June 2012. The Committee had not agreed on a proposed outcome but it was already scheduled in the programme that the Officers would brief the Recurrent Item Committee on the outcome. The Office had not been informed that the Employer members would leave the room and had been taken by surprise. The Government members had been extremely patient and she thanked them for this, as well as for their respect for the institution.

142. On Saturday afternoon, with regard to the ongoing efforts to prepare a mutually agreeable list of cases, the Chairperson announced that he had taken the initiative to convene an informal meeting with all regional coordinators and the Vice-Chairpersons but unfortunately this meeting had produced no results. He also indicated that the different questions put forward by several Government members regarding the manner in which the Committee would proceed with its work would be answered at the Committee's next sitting on Monday, 4 June.

143. The Government of Brazil, speaking on behalf of GRULAC, said that they had held a meeting at which GRULAC reiterated its commitment to the supervisory system but noted that once again the list of individual cases was not ready in time. He repeated the group's view that the fact that the list was not ready was offensive and disrespectful vis-à-vis the

governments. Its position was therefore that, if no list was presented before the end of the day (and he was referring to a complete list), then the group did not want any list at all. The situation that had arisen showed that the procedures needed to be reviewed by the Governing Body. He concluded by reiterating GRULAC's firm support for the respect of the plan of work and for the position of the Government group.

144. On Monday, 4 June 2012, the Employer and Worker members, as well as several Government members, made the following statements.

145. The Employer members provided the following explanations concerning the situation that had arisen with regard to the list of cases. In relation to the interpretation of the right to strike, they referred to the publication of the Committee of Experts' General Survey on the eight ILO fundamental Conventions in advance of the 101st Session of the International Labour Conference. The General Survey was a guide to the Conference Committee to assist it with its work when supervising the application of ratified labour standards by member States of the ILO. The General Survey, like the report of the Committee of Experts, was not an agreed or authoritative text of the ILO tripartite constituents, namely, the Governments, Employers and Workers. Outside of the ILO, this important distinction was either misunderstood or forgotten and General Surveys were seen as being the position of the ILO, which they were not. The Employer members had, for many years, consistently stated this position concerning General Surveys and the reports of the Committee of Experts. The role of the International Labour Office was to serve its tripartite constituents to the best of its abilities. The ILO was the Governments, Workers and Employers. Both the General Survey and the report of the Committee of Experts were created with the assistance of the International Labour Office. The Governments, Employers and Workers were not involved in their creation or publication. The first opportunity for the Governments, Employers and Workers to consider these publications as groups was at the International Labour Conference.

146. The eight fundamental Conventions were important not only within the ILO, but also because other international institutions regularly used them in their activities. The fundamental Conventions were embedded in the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Human Rights Council's "Protect, Respect and Remedy" framework. The ILO's supervisory machinery related to member States only, not to businesses, so it was vital that, when other international institutions used the fundamental Conventions, such use was correct. A correct understanding of the fundamental Conventions was imperative for businesses because they were used in international framework agreements, transnational company agreements and in European framework agreements with global trade unions, where they were often not defined. Accordingly, that year's General Survey had particular contextual importance for the Employer members. Within the General Survey, the commentary on Convention No. 87 concerning freedom of association included interpretations by the Committee of Experts on the exercise of the right to strike.

147. Interpretations of a right to strike by the Committee of Experts were fundamentally unacceptable to the Employer members. The Employer members stated that they had made it clear last week to the Conference Committee that they were of the view that the Committee of Experts' position regarding the right to strike outlined in that year's General Survey did not reflect the views of the Employer and Worker members in the Conference Committee. The Employers' group had a long-held policy position in the ILO on this matter. They had repeatedly expressed their opposition to any attempt by the Committee of Experts to interpret the ways by which the right to strike, where it was recognized in national law, could be exercised. This issue was complicated by the fact that Convention No. 87 itself was silent on the right to strike and, in the view of the Employer members, was therefore not an issue upon which the Committee of Experts should express any

opinion. The mandate of the Committee of Experts was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87. The General Survey was simply meant to be used by the Conference Committee to inform its work, leaving it for the tripartite constituents to determine, where consensus existed, the position of the ILO, with regard to the supervision of Conventions. Further, under article 37 of the ILO Constitution, only the ICJ could give a definitive interpretation of international labour Conventions. If the Constitution were to be applied, given the absence of any reference to a right to strike in the actual text of Convention No. 87, then internationally accepted rules of interpretation required Convention No. 87 to be interpreted without a right to strike. In addition, it should be noted that the principle of freedom of association contained in Convention No. 87 had a separate supervisory procedure: namely the Committee on Freedom of Association (CFA). The Employer members had also objected for many years about the use of CFA cases by the Committee of Experts when examining Convention No. 87, the use of CFA cases when interpreting the right to strike, and the use of the Committee of Experts' interpretations of the right to strike in the CFA. The Employer members were critical of the confusion and lack of certainty that the supervisory system created.

148. In the view of the Employer members, Convention No. 87 cases that concerned a nationally recognized right to strike should only be supervised by the CFA only in order to ensure certainty and coherence. They objected to any view that the Committee of Experts' interpretations of the right to strike were legal jurisprudence, as the Committee of Experts did not have a judicial mandate within the ILO. The Committee of Experts did not have a determinative role within the ILO supervisory machinery. The Committee of Experts did not supervise labour standards; rather the ILO tripartite constituents did. Referring their interpretations of the right to strike within Convention No. 87 to the ICJ was therefore inappropriate. The CFA produced recommendations to the Governing Body for adoption. The Governing Body did not have a judicial role either; it also did not supervise labour standards. For the same reason, referring the CFA recommendations to the ICJ was also inappropriate.

149. The interpretation of the right to strike was important because the Employer members asserted that it was for national governments to establish their own rules/practices concerning the right to strike when considering how to resolve national breakdowns in industrial relations. It was important in the context of the international human rights debate that a correct use of Convention No. 87 was made, because an incorrect inclusion of the right to strike risked the Committee of Experts' interpretation of the right to strike becoming an internationally accepted human right to strike, which would restrict the ability of national governments to define their right to strike. This restricted the role of governments in, for example, the circumstances when a lawful strike could be called and the definition of essential services. This was unacceptable to the Employer members. There was no legal requirement for governments that had ratified Convention No. 87 to address the Committee of Experts' interpretation of the right to strike. The Employer members could not agree to the Committee of Experts' interpretation of the right to strike because of the risk that it would be misused.

150. Regarding this year's Conference, the Employer members stated that, given their longstanding objections to the Committee of Experts' interpretation of the right to strike, they sought to clarify the mandate of the Committee of Experts with regard to the General Survey. They brought this important issue to the attention of the Worker members and, together, they had negotiated and formulated the following draft clarification: "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents." The Employer members' proposal was that the International Labour Office would be instructed to immediately insert the clarification in future hard copy and ILO

website publications of this year's General Survey and the report of the Committee of Experts. It was not possible to simply remove the Committee of Experts' interpretations as the International Labour Office had already published the General Survey containing the Committee of Experts' interpretation of the right to strike. They had made it clear that without the abovementioned clarification in respect to the General Survey, in order for the Employer members' consideration of the cases in the Committee to be coherent, they could not accept the supervision of Convention No. 87 cases that included interpretations by the Committee of Experts regarding the right to strike. After much confidential negotiation with the Worker members, regrettably, those negotiations had irretrievably broken down. The Employer members considered, in this connection, that it was inappropriate to lift the veil on those negotiations, as they were and remained of a confidential nature.

151. The Employer members highlighted that on Friday, 1 June 2012, after the negotiations had irretrievably broken down, the Employer Vice-Chairperson returned to the Committee room, as he was informed that the Worker Vice-Chairperson had done so. His position was that the negotiations had failed so there was confusion concerning why it was necessary to return to the Committee room. During the period he was in the room, he observed officials of the International Labour Office in discussions with Worker and Government members of the Committee. It was important to be aware that Employer members had made it clear that the list of cases to be supervised could only be agreed in direct negotiation with the Worker members. The Government members could not be involved as they had a conflict of national interest. The International Labour Office could not be involved as it was not an ILO constituent and had to be impartial. Members of the Employers' group had been waiting in the Committee room from 5 p.m. awaiting confirmation concerning the negotiations. The Employer Vice-Chairperson informed the Employer members that the negotiations had failed. At 8.31 p.m., when the meeting was 91 minutes past its scheduled close of 7 p.m., as no one from the International Labour Office had communicated to him what was happening, he had then informed the Deputy Director of the International Labour Standards Department that the Employer members were leaving the Committee room for the evening. The Employer members had then left. There had been no meeting of the Conference Committee occurring at the time so it had not been a walk-out. The Employer members had left the room after the scheduled close and while private meetings involving others had been happening, of which the Employer members had known nothing about. Many other delegates had either left or were leaving. The Employer members had attended the next scheduled meeting.

152. On Saturday, 2 June 2012, following a request from the Government regional coordinators for an informal meeting with the Employer and Worker Vice-Chairpersons, the Employer Vice-Chairperson had attended the informal meeting and explained that he would not negotiate a list of cases with the involvement of the Government members. He had confirmed that he would provide a statement of the Employer members' position with regard to the failed negotiations for a list of cases.

153. The Employer members then proposed a possible way forward for the Conference Committee, and formulated the following suggestions:

- The Employer members remained supportive of the application of labour standards provided there was respect for genuine tripartism of the ILO constituents.

- The proposed clarification to clearly appear in all International Labour Office and Committee of Experts documentation prepared for a debate and discussion by the International Labour Conference or the Governing Body.

- An urgent review of the working methods and mandate of the international labour standards supervisory system (including its interaction with other areas of the ILO),

including the Committee of Experts, the Conference Committee and the International Labour Office, was required.

– The Employer and Worker Vice-Chairpersons to meet with the Committee of Experts before they started their work each year and for the Committee of Experts to have far greater interaction with employers' and workers' bureaux within the ILO in order to strengthen cooperation and governance. The Committee of Experts should have a tripartite agreed framework in which to do its work. In past years, the Employer members had proposed changes to the format of reports of the Committee of Experts with a view to have tripartite views better reflected. More precisely, the Employer members proposed that there should be possibilities for Employers, Workers and Governments to set out in the reports of the Committee of Experts their views on standards supervision-related issues, including on the application and interpretation of particular Conventions.

– An urgent review of the International Labour Standards Department of the International Labour Office was required. The role of ILO officials required respect for the tripartism and impartiality in their work. Their role was to support and facilitate the work of the ILO tripartite constituents, which required neutrality and balance. It required staffing with politically neutral international civil servants that supported the work of the Committee of Experts, not the Committee of Experts supporting the work of the Office. Neutrality would help create mature and respectful international industrial relations between the Governments, Employers and Workers.

– Respect for the relationships with other international agencies to ensure that the views of the ILO were those of the tripartite constituents.

154. In conclusion, the Employer members stated that the ILO was now facing a multifaceted crisis concerning the interpretation of the right to strike in connection with Convention No. 87. It was not acceptable for anyone to be confused or misled as to the true status of any ILO text simply because it bore its logo or was silent as to its proper status. This was now more than just an issue involving the General Survey as it affected the Convention No. 87 cases to be supervised in the Conference Committee. The absence of an express right to strike in Convention No. 87 meant that the Committee of Experts was effectively making policy, which was outside of their mandate. Policy-making was the exclusive domain of the Governments, Employers and Workers. The Committee of Experts could advise on application, not determine application on behalf of the ILO and certainly not determine new rights and obligations regarding a right to strike within Convention No. 87. It was important that all Governments, Employers and Workers alerted their constituents and relevant authorities as to the true status of the Committee of Experts' interpretation of the right to strike.

155. The Worker members emphasized that the situation seen today had never before been experienced in the history of the Committee on the Application of Standards. They added that the present statement was the outcome of long discussions in the Workers' group of the Committee which, alarmed by the course of events, had called for a statement that was clear and strong, but nevertheless constructive. In the view of the Worker members, the Committee needed to proceed with its work and the cases should be discussed without delay, as requested vigorously by the Government members present on Friday evening and Saturday afternoon.

156. The Worker members said that a rereading of the records of the Committee for previous years showed that for a few years the issue of the choice of individual cases had become a very difficult exercise, and not only in view of developments in the political and economic situation in many member States. Considerations related to the supervisory machinery

itself had been raised by the Employer members, who had started to express the wish to weaken the supervisory methods in 2010. Yet, in 2009, the spokesperson for the Employers' group had indicated the following: "The Employer members pointed out that the participation of the Chairperson of the Committee of Experts in the work of the Committee reflected the essential fact-finding role of the Committee of Experts in relation to the work of the Conference Committee. Without the help of the Committee of Experts, this Committee could not function." (*Record of Proceedings* No. 16, paragraph 42). This was clearly true and, as recalled the previous Friday by Mr Yokota, Chairperson of the Committee of Experts, the Committee of Experts took everything into account when drawing up its reports. It had a global vision of the information provided and on that basis it carried out an analysis of law and practice.

157. The Worker members emphasized that in 2010 the Employer members had mounted a first major challenge against a large number of principles that were commonly accepted and recognized as guarantees of the Committee's work as a supervisory body of the application of ratified ILO Conventions. The Employer members had clearly indicated, on several occasions, that in their view the tripartite governance of the supervision of the application of standards was compromised, or at least that there was a faulty line in this process of tripartite governance.

158. The Worker members had emphasized in 2011 that the list had to be drawn up together, that is with the Employer members, and that it was together that they had to reach a compromise, as a veto had no place in the process, either directly (by rejecting a particular country) or indirectly (by establishing restrictive rules). They had specified that the rule could not be that one of the parties always had to give way, and it was to be regretted that methods of work based on consensus were increasingly difficult to achieve.

159. The Worker members affirmed that this year they had been very brutally confronted by the fact that the Employer members were contesting the mandate of the Committee of Experts, essentially in relation to the interpretation of the right to strike under Convention No. 87. It should be clarified that that this challenge to the General Survey and the mandate of the Committee of Experts only came from the Employer members, who had no right to make comments in the name of this Committee against the supervisory system. The direct consequence had been that an explicit veto had been expressed in relation to the possible examination of individual cases in which the right to strike might be raised during the discussion.

160. The Worker members considered that the confrontation had been brutal for the following reasons. As happened every year, significant preparatory work had been carried out within the Workers' group. The preparatory work was carried out seriously because, for the Worker members, the discussion of the most serious individual cases at the Conference was a unique occasion. It was the only time that they could describe openly and without fear the numerous violations of the rights accorded to them by ILO standards. The report of the Committee of Experts had been published on 28 February 2012. The General Survey had been published on the same date. The electronic versions of those documents had been published on the Web on 2 March 2012. Yet, during the 313th Session of the Governing Body, held in March 2012, the Employers had not at any time given an indication of any possible criticisms concerning the role of the Committee of Experts, nor on it exceeding its mandate in its interpretation of the right to strike. It had only been on Friday, 1 June 2012, during the discussion of the General Report, that the Employer members had clearly indicated, in the context of the present Committee, their vision on this divergence of views. However, based on the published reports, the preparatory work of the Workers' group had commenced in March 2012 in regional coordination meetings, and then in an international meeting held in Brussels on 2 April. It had culminated in May in a series of open, frank and sincere confidence building contacts with the spokesperson of the Employer members

of the Committee. On that occasion, without any reservations, he had put forward his group's list of cases, with no comment on the mandate of the Committee of Experts, or on any reservations concerning the discussion of Convention No. 87. A preliminary list of 49 cases had accordingly been drawn up and forwarded by the ILO to governments on 8 May 2012.

161. In the Worker members' view of the approach to the work of supervising the application of standards, they considered very sincerely that the contribution of the Employers' group, through their spokesperson, who had made suggestions for cases to be included in the provisional list, had meant that preparatory work similar to that of the Workers' group had been undertaken. That was particularly the case as it was known that the list was to be forwarded to governments.

162. The Worker members were very willing to recognize that in certain countries the rights of employers were also violated and that the Employer members valued more technical subjects. Clearly, there was no obligation to engage in preparatory work, as understood by the Worker members. Each group was free to organize its own work. However, taking the supervisory machinery seriously required preparatory work, for the members themselves and for those involved in the discussion process. That was why the Worker members were certain that they could work constructively as soon as they arrived at the Conference. They had never imagined that the drawing up of a final list of 25 cases to be discussed in the Committee would be as dramatic as it had been this year. They had never thought that they would be driven to make the proposal that they had put forward on Friday evening.

163. The Worker members emphasized that their objective had clearly been to come together and, on a basis of consensus, to place emphasis on the most serious cases and to give a very clear signal to the governments on the list concerning the serious nature of their failings. It was clear that coming up with a preliminary list of 49 cases had already been very frustrating for many Worker members present in the Committee. Even though they had understood that the case concerning their government would not be raised, many colleagues had nevertheless made the journey to the Conference in Geneva, which was the only forum in which their voices could be heard and where they could participate effectively in the discussions.

164. The Worker members recalled that, as indicated by the Worker member of Colombia on Friday: the process of drawing up the final list of cases had always been difficult, but the list was not a spoil of war and did not require the taking of hostages, that wisdom always prevailed and that an agreed list would certainly be presented to governments. Many of the Workers' group still expected such consensus, as a serious political indication of continued belief in social dialogue, the functioning of the ILO supervisory procedures and therefore in its standards.

165. The Worker members said that they had gained the impression that, for the Employer members, the present session of the Committee on the Application of Standards had already ended, that everything would return to normal tomorrow and that in 2013 work would continue as if nothing had happened. However, reflection would be required on the way forward. The Employer members had put forward proposals, but that was the task of the Governing Body, which would have to consider the latest events without delay, as the Conference Committee was not the place to discuss them. Being made aware of them before the Conference would have made it possible for the Committee to go ahead with its supervisory work, instead of creating a crisis situation that was prejudicial to everyone.

166. The Worker members stated that, more than anyone, they wanted to come through the storm. Employers needed workers and their representatives, and should not forget that. Without social peace, without counterparts, it would be the law of the jungle and no longer

a question of productivity or growth. The Worker members wondered whether the intention was to override the social pacts which governed industrial relations in many countries.

167. The Worker members emphasized that governments were shocked, which was understandable. But the Worker members were also shocked and were the losers: because they had played by the rules of the game and, as early as March, certain colleagues had already given up the hope of seeing their situation discussed out of solidarity with other colleagues, to whom they had given priority; because they had been taken hostage in a so-called struggle between the Employer members and the Committee of Experts; because the discussion of the role of the Committee of Experts and its competence to give an interpretation of the right to strike did not lie with the Committee on the Application of Standards, but with the Governing Body; because, as a result of the sabotage of the supervisory machinery, it was the rights of workers that were being disregarded; and because workers and their families were the primary victims of the fact that the serious situations that they were experiencing could not be discussed.

168. The Worker members raised the question of what the Employer members wished to gain through this strategy that had been developed over time, and certainly since the Committee's work in 2010. On that occasion, the Worker members had already had to react to the same attacks as those reiterated on this occasion, without warning, at the beginning of the Committee's work. The Worker members wondered if the Employer members were seeking to finish the Committee of Experts, and if the Committee on Freedom of Association would be the next victim. Yet it should be recalled that those bodies were appointed through a tripartite procedure.

169. The Worker members recalled that, on Friday evening, in the absence of a negotiated list, at the risk of shocking many Worker colleagues present in the room, the Worker Vice-Chairperson had had to make a proposal to the Committee. That had been done for the benefit only of the Government members, as the Employer members had left the room without warning, even though the Chairperson had not adjourned the sitting. There had been no negotiated list because the conditions that had been imposed by the Employer members upon the Worker members were unacceptable. In the absence of a final list, the Worker Vice-Chairperson had therefore proposed that 25 cases should be discussed from the long list forwarded to governments on 8 May. A first group would be composed of the five cases with double footnotes. A second group would be made up of 20 cases taken from the long list, starting from the letter K and following the French alphabetical order. This proposal was based on the working methods that had been agreed to in document D.1. The selected method for drawing up the list, based on the pure logic of the French alphabetical order, had been and remained a very delicate matter. It should however be recalled that the list, whether long or short, was one of the elements of the supervisory system itself since, through the list, a clear signal was sent to governments that the situation of non-compliance with ILO Conventions could not continue on their territory. Inclusion on the long list was an indication that pressure was mounting and that the international community was aware of the gravity of the situation of disregard for workers' rights. It had been the only solution to go forward with dignity.

170. Following those explanations, the Worker members wished to put on record that what was occurring in the Committee was not their will. At no time had there been agreement on the list, as some were trying to make people believe. At no time had the Worker members broken off the dialogue or acted in bad faith. The Worker members were in no way responsible for the challenges raised by the Employer members concerning the role of the Committee of Experts and their authority to interpret the links between Convention No. 87 and the right to strike. Moreover, they did not support such a challenge. The Worker members had not been informed of those types of arguments before the Conference, during

the Governing Body in March, nor during the contacts to draw up the preliminary list, or at any other time or by any means.

171. The Worker members concluded that the imposition was not acceptable of such purely exorbitant conditions which went beyond the competence of this Committee, as they were of a political nature. They could not accept such arbitrary edicts based on factors over which, within the Committee, they had no power and which would have the consequence that the cases selected in May might never be discussed. All of that was to be regretted and gave rise to immense wastage: many trade unions and employers' organizations invested time and money in the work of the Committee, as did governments. They could not be sent home empty-handed. The wastage was particularly incomprehensible in view of the calls made by the Employer members for the ILO to make greater savings. The Worker members called on all parties to exercise wisdom and remained open to any solution that was approved and obtained through constructive negotiation.

172. The Government member of Sudan, speaking on behalf of the Government members, regretted that there was no list of individual cases to be discussed at the Committee on the Application of Standards. He considered that a further discussion on the substantive issues raised by the Employer and Worker members had to take place in an appropriate forum. The speaker also considered that this situation clearly showed that there was a need to review the working methods of this Committee.

173. The Government member of Pakistan, speaking on behalf of the Asia and Pacific group (ASPAG), stated that his group valued very much the supervisory mechanism for promoting and supervising ILO standards. For many years, through this system, the governments had received necessary guidance from the social partners that had helped them to overcome challenges in realizing ILO's fundamental principles and values at work. At the same time, governments also felt the need to further streamline the system to make it efficient and fair. They felt that there was a need to establish criteria that allowed the selection of cases by the social partners in a more objective and timely manner. Such a reform would certainly help not only to bring transparency but also to establish sanctity and efficacy of this supervisory system. He indicated that as a result of last year's events and developments during the proceedings of the Committee this year, such reform was inevitable and had to be given priority. At the same time, ASPAG felt that unnecessary delay in the finalization of the list of individual cases this year had caused immense inconvenience for governments. ASPAG therefore called for this particular issue to be addressed before handling individual cases in the Committee on the Application of Standards in the future.

174. The Government member of Niger, speaking on behalf of the Africa group, supported the analysis by the Government group of the absence of the list of individual cases and felt that this regrettable situation highlighted the need to review the working methods for the preparation of the list of cases, which needed more transparency and objective criteria. The current situation should lead to urgent reflection on the revision of the whole of the supervisory system for international labour standards. In the future, it would be essential to communicate the list of individual cases well before the start of the work of the Conference in order to enable the governments to prepare their replies. Lastly, in view of this year's delay, no list could be objectively examined during the current session of the Committee.

175. The Government member of Brazil, speaking on behalf of GRULAC, stated that GRULAC had always been consistent in its position. Since July 2011, the group had been stating that any repetition of the events that had occurred in the Committee at the 100th Session of the Conference should be avoided and that the list should be published in accordance with the plan of work, on the second day of the Committee's session. This request, that deadlines be respected, was repeated at the Governing Body in both November 2011 and March 2012.

GRULAC had shown some flexibility regarding the publication of the list on the third day of the Committee's session, at the latest. On the fourth day of the Committee, in a display of goodwill and flexibility, it had asked for the list to be published that day at the latest. The group had shown consistency in its position and its commitment towards the ILO supervisory system and the constitutional mandate of the Committee. It considered that the current situation was totally unacceptable and stated that there was a need to review the Committee's procedures. The current degree of uncertainty was having a damaging effect on its credibility. The preparation of the list was a prerogative of the social partners. As with any prerogative, it had to be exercised with responsibility and with respect towards governments. These procedures had shown a lack of respect towards governments once again, since they had had no time to prepare or to participate in debates. In conclusion, the speaker reiterated the need for respecting the deadline for the publication of the list and for modifying the Committee's procedures with a view to improving objectivity and transparency and ensuring greater respect for the Government members.

176. The Government member of the United States, speaking on behalf of IMEC, indicated that at the opening sitting of the Committee, IMEC had joined in a unified call by the Government group for prompt adoption of the list of individual country cases. The subsequent deadlock that had prevented the adoption of a list was totally without precedent in the 85-year history of the Committee. It was both disappointing and distressing.

177. It was the firm, long-standing position of IMEC that the governments should not get involved in the development of the list of cases. This position had not changed. For the record, there had been no involvement of governments in the negotiations of the list of cases, and at no time did the governments request to be part of them. The Conference would need to understand that this problem had not been caused by governments.

178. Although governments did not participate in developing the list of cases, they were a key component of this Committee. Governments ratified and implemented Conventions, and then agreed to discuss issues of compliance with the Workers and Employers' groups at the International Labour Conference. The situation at this Conference had put governments in an extremely difficult position, and IMEC regretted that at times there was a distinct lack of courtesy shown towards them.

179. It was the prerogative of the social partners to agree to a final list of individual country cases. While the social partners had the right to agree on the criteria for the list, IMEC did not believe that it was appropriate for the Employer and the Worker members to make agreement on a list conditional upon external issues on which governments had a role in the discussion and decision-making process.

180. It was IMEC's view that the role of the Committee on the Application of Standards was to consider the Experts' report on individual cases, and not to question the status of that report. The issues that had been raised by the Employer members needed to be dealt with in an appropriate forum, but IMEC did not consider that the Committee on the Application of Standards was the appropriate one, and wished to request the ILO Legal Adviser to explain the available options.

181. There were a number of reasons why IMEC was deeply distressed about the failure of the social partners to adopt a list of individual country cases. First, the failure to adopt a list of cases had prevented this Committee from executing the critically important work of supervising countries in the application of labour standards as required by the ILO Constitution and previous decisions of the International Labour Conference. Secondly, the ILO supervisory system was unique and was an essential element of the Organization's mandate and mission. The ILO supervisory mechanisms had long been cited as the most advanced and best functioning of the international system. Not only did the present

situation reflect poorly on the Committee, but also it had serious ramifications for the ILO supervisory system as a whole, and risked irreparable damage to the credibility of the entire Organization.

182. IMEC had a long history of supporting the independence, impartiality and objectivity of the Committee of Experts, as well as its autonomy. The group could understand that there would be occasions when members or groups within the Committee on the Application of Standards would have views that differed from those of the Committee of Experts, and all members had the fundamental right to express those views. However, it was regrettable that the events of the past few days had resulted in a situation that potentially had put the credibility of the ILO and the supervisory system in jeopardy.

183. The question at this point was where this Committee would go. In this connection, IMEC was encouraged that, in the previous week, the Chairperson of the Committee of Experts specifically indicated in his presentation to this Committee a willingness to continue constructive dialogue with this Committee on issues that were at the heart of this present conflict. In addition, the question on the right to strike within the context of Convention No. 87 was a long-standing issue which had not been resolved through tripartite dialogue to date. IMEC noted that article 37 of the ILO Constitution provided that legal clarification on such questions could be sought from the ICJ.

184. The speaker concluded by stating that governments needed to be involved in discussions and decisions on issues other than the negotiation of the list, and in this regard, IMEC welcomed the opportunity to work with the social partners to resolve the concerns raised by the Employer members. IMEC wished to reiterate its strong commitment to the ILO supervisory system and the role of the Committee on the Application of Standards. It was also committed to moving forward in a positive, constructive manner in the spirit of tripartism.

185. The Employer members stated that regretfully, from this point forward, they were working on the basis that there would not be a list of individual cases this year. They also agreed that there was a need for further discussions with regard to the issues that had been raised. They recalled that the International Labour Conference was the supreme body of the ILO and it was for that body to find a solution and that the matter should not be referred to the Governing Body. There was a clear need to agree on the working methods of this Committee and reforms were necessary. Moreover, they insisted on the fact that the behaviour, actions and negotiations of the Employer members had been done in good faith. The reiterated that the Employer members had always intended to respect the governments' time frames, and that the continued negotiations, which had extended past the intended deadline of Thursday afternoon, were not meant to cause any discourtesy to governments. When discussing the working methods, consideration should be given to communication in view of the size of this Committee. Finally, they reiterated that they still had a strong commitment to the Conference Committee and to genuine tripartism.

186. The Worker members emphasized the fact that they could not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the Committee of Experts. The Worker members considered that it was not the place of the Committee on the Application of Standards and certainly not the Employer members and Worker members alone to discuss such a disclaimer as a discussion of this kind fell within the competence of all ILO constituents. This approach had been confirmed by many governments. Nevertheless, without taking this into account, the Employer members continued to insist on the insertion of such a disclaimer. The Worker members might eventually agree to a joint statement on the divergence of views on the role and mandate of the Committee of Experts. They could thus envisage discussing this divergence of views where it should be discussed, namely in the Governing Body. It would therefore be the

responsibility of the Governing Body to develop a plan to address the subject. The ILO Constitution also provided for the competence of the ICJ for the interpretation of Conventions. The Worker members regretted enormously that the Employer members could not agree to such an approach. They concluded that genuine tripartite social dialogue could not take place within a situation of deadlock.

The reply of the representative of the Secretary-General

187. The representative of the Secretary-General, in response to the comments made by the Employers members, confirmed that the Committee on the Application of Standards had never faced a situation like the current one since its creation in 1926. The Committee was the apex of the supervisory mechanism under a constitutional mandate, but, this year, it had completed its work only partially, having performed its mandate under article 19 of the ILO Constitution, but having failed to do so with respect to article 22 of the Constitution.

188. The International Labour Standards Department had provided its support to the supervisory system, and would continue to do so in total neutrality, balance and impartiality. The Office was governed by article 9 of the ILO Constitution, the Staff Regulations of the Office and the Standards of Conduct of the International Civil Service. Article 9 of the Constitution provided that in the performance of their duties, the staff was required not to seek or receive instructions from any government or other authority external to the Organization. Article 1.1 and 1.4 of the Staff Regulations required all officials not to seek or accept instructions in regard to the performance of their duties from any government or other authority external to the International Labour Office. They had to be subject to the authority of the Director-General and had to be responsible to him in the exercise of their functions. It was recalled that the work of the International Labour Standards Department had never been questioned to date by any official bodies of the Organization. On the contrary, it had been congratulated on numerous occasions by all the supervisory bodies, including the groups of the Conference Committee in the past.

189. She indicated that it was clear that the principles and recommendations of the Committee of Experts, the Committee on Freedom of Association, and the recommendations of the Conference Committee were views and recommendations, and were accordingly not binding. However, they had enormous moral authority. International labour Conventions and Recommendations clearly had more legal authority than any recommendations by a supervisory body.

190. The principles on the right to strike of the Committee of Experts had a tripartite origin: the Committee on Freedom of Association. It was difficult to understand how these principles could be contested within the framework of the Committee of Experts, but accepted in the context of the Committee on Freedom of Association. She then referred to a publication entitled *Employers' organizations and the ILO supervisory machinery*, a joint publication by the International Labour Standards Department and the International Training Centre in Turin in cooperation with the Bureau for Employers' Activities, which had been signed by the Secretary-General of the International Organisation of Employers (IOE), the Director of the Bureau for Employers' Activities and by the Director of the International Labour Standards Department, and indicated that employers had put forward a number of principles related to the right to strike within the context of the supervisory bodies.

191. The weakening of the ILO supervisory machinery would hinder the action for the Office to resolve problems experienced by employers' and workers' organizations in a number of countries. She wished to express the view that many employers' organizations had been able to exist and thrive because of the work of the Committee of Experts together with that of the Conference Committee. The failure to discuss individual cases was in no one's

interest, as workers' and employers' organizations had come to the Conference to have their concerns examined, as provided for by the Standing Orders of the International Labour Conference.

192. Numerous options had been proposed to address the issues relating to the right to strike. It had to be borne in mind that any decision to refer the question of the right to strike to the ICJ, as provided in article 37(1) of the ILO Constitution, could have the effect of making the principles on the right to strike obligatory, while they were now only soft law. She emphasized the need not to forget that the members of the Committee of Experts were appointed through a tripartite process by the Governing Body. She concluded by stating that it was a sad day for the supervisory system and that she shared the concerns expressed during the sitting of the Committee.

The reply of the Chairperson of the Committee

193. The Chairperson expressed his deep regret about the current situation. Nonetheless, he expressed optimism that this situation should allow for reflection and for a solution to be found. The social partners had the same goals of social justice, peace and welfare and trust between them was not lost.

The reply of the Legal Adviser

194. The Legal Adviser, speaking in response to the question raised by IMEC as to what options were available to the Conference Committee to deal with the issues raised by the Employer members on the supervisory machinery and how this could be done in the appropriate forum, presented two options. First, a specific chapter could be created in the report of the Committee on the Application of Standards reflecting the content of the discussion and the different views expressed on the functioning of this Committee, including those in relation to the reports of the Committee of Experts. The specific chapter could terminate with a request for the Conference to decide to ask the Director-General to communicate that chapter to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency. The terms of this request could be further defined in the proposed decision and could include suggestions on the manner in which the Conference would further review the matter following action taken by the Governing Body within its mandate, including any relevant proposals on reform in relation to the functioning of the Conference Committee. Secondly, Committee members concerned could submit the text of a proposed resolution for this Committee to submit to the Conference together with its report. This resolution could note the different views expressed at this session and call for a review of the matters raised and the functioning of the Conference Committee's working methods, including in relation to the reports of the Committee of Experts. It could invite the Governing Body to take up this issue as a matter of urgency, in the context of its ongoing work relating to reform of the Conference or in any other appropriate manner. Such a resolution would be submitted and discussed in accordance with article 63 of the Standing Orders of the Conference.

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195. The Chairperson indicated that he was forced to close the discussion due to the failure to adopt a list of cases to be discussed during this session of the Conference Committee.

F. Follow-up discussion on the way forward

196. The Government member of Sudan, speaking on behalf of the Government group, stated that the Government group was not at this time in a position to discuss the substantive and procedural issues in relation to the functioning of the Conference Committee and the reports of the Committee of Experts. The Government group had noted the options presented by the representative of the Legal Adviser and recommended that a specific chapter be included in the report of the Committee on the Application of Standards reflecting the content of the discussion on those issues as well as the different views expressed. The Government group suggested that the specific chapter should terminate with a request for the International Labour Conference to decide to ask the Director-General to communicate that chapter of the report to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency.

197. The Government member of Belarus supported the statement of the Government group and added that the specific chapter was an important issue which should be brought to the attention of the International Labour Conference.

198. The Employer members were optimistic that, after reflection upon the situation, the Committee would find a way forward, since the tripartite constituents had one common aim – social justice. They appreciated the legal opinion given by the Legal Adviser and anticipated that further questions would be raised by the Committee. However, the Employer members expressed the concern that both options elaborated upon in the legal opinion necessitated further delay in seeking a solution and required this Committee, despite being a sovereign body and the apex of the supervisory system, to refer the matter to a lower body, the Governing Body. In their view, the problem would not be solved before the Governing Body but rather returned to the International Labour Conference at a later stage. It was thus preferable to find a solution now rather than to perpetuate the crisis. Therefore, the Employer members submitted the proposal to add the following text as an introductory paragraph to the General Survey and the report of the Committee of Experts:

> Appendix V (Article 408 of the Treaty of Versailles) to the *Record of Proceedings* of the International Labour Conference in 1926 explained the necessity of a technical committee of experts (later named the Committee of Experts on the Application of Conventions and Recommendations (CEACR)) as follows:
>
> "The functions of the Committee would be entirely technical and in no sense judicial."
>
> "It was agreed however that the Committee of Experts would have no judicial capacity nor would it be competent to give interpretations of the provisions of the Convention nor to decide in favour of one interpretation rather than of another."
>
> At the 103rd Session of the Governing Body in 1947, it was explained that the CEACR would "carry out an examination of the annual reports submitted by the Governments … in preparation for the examination of these reports from a wider angle by the Conference" and that this served as an "indispensable preliminary to the over-all survey of application conducted by the Conference through its committee on the Application of Conventions" (paragraph 36, Annex XII, Minutes).

199. The Employer members underlined that this text had been agreed upon in 1926 and reaffirmed in 1947 and that nothing had changed since. They raised the question as to why no agreement could be reached on the insertion of such a text at present. While acknowledging that the current situation was very difficult for governments and that they needed time to consult with their capitals, the Employer members reiterated that there was an urgent need to respond to this key question and discuss the issue immediately. On 7 July 2011, the Bureau for Employers' Activities had submitted the views of the IOE concerning the right to strike in advance of the elaboration of the General Survey, indicating in particular that:

> The right to strike is not provided for in either Convention Nos 87 or 98, and was not intended to be. The legislative history of Convention No. 87 is indisputably clear that, "the proposed Convention relates only to freedom of association and not to the right to strike". Furthermore, as was emphasized by the Employer spokesperson during the final discussion of Convention No. 98 in 1949, "the Conference Chairman declared irreceivable the two amendments aimed at incorporating a guarantee for the right to strike, as they were not put in the scope of the Convention. The Speaker thus expressed the opinion that the passage in question constituted a factual error with respect to the historical basis of the right to strike being fundamentally inherent in these Conventions".

200. The Employer members felt that they had raised the issue of the right to strike consistently for numerous years and that they had been ignored in this respect. The content of the General Survey and its use, or misuse, by the outside world had made it imperative for the Employer members to seek clarification of the situation, as it was vital for governments, employers and workers to be clear on what was the right to strike in relation to the ILO. The Employer members indicated that, should the Conference Committee reach an agreement as regards the immediate insertion of the above introductory paragraph into the General Survey and the report of the Committee of Experts, this would address their concerns with regard to the status of these reports, in which case they would be prepared to discuss the five "double-footnoted" cases, which dealt with the most serious violations of ratified Conventions.

201. In conclusion, the Employer members believed that there were lessons to be learnt by all members of the Committee as to communication and management of similar crisis situations. As regards the concern expressed by Government members, that this issue should have been raised in advance before the Governing Body in a tripartite way, the Employer members responded that the matter had not been on the agenda of the Governing Body and that the International Labour Conference was a sovereign body. The Employer members reiterated their preference that the current situation, which had been brought to a head by this year's General Survey and its use in the outside world, and not by other factors, be resolved in this tripartite sovereign body without delay. There was no bigger industrial relations issue in the world of work than the right to strike, and the General Survey had created the need to resolve the issue urgently so that there would be certainty among tripartite constituents.

202. The Worker members emphasized that from the outset of the work of the Committee they had shown a genuinely constructive attitude, going beyond mere words and putting proposals on the table. However, the current impasse was due to unacceptable, even illegitimate, conditions which had been imposed with regard to drawing up the list of individual cases, notwithstanding the fact that the prime task of the Committee was to examine the cases on that list.

203. The Worker members thanked the Legal Adviser for the replies to the questions raised by IMEC concerning the options available before the Committee. With regard to the explanations given, some points needed further consideration and other questions should be asked, with the proviso that the asking of those questions in no way meant that the Worker members accepted any legal solution or gave their agreement with regard to any specific procedure. Repeated reference had been made to article 37 of the ILO Constitution, which stated as follows: "Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice." The ICJ had been established by article 92 of the United Nations Charter and it had both contentious and advisory jurisdiction. It was only States that could submit contentious cases to the ICJ. Advisory proceedings could be instituted by the General Assembly and the Security Council, as well as by other UN

bodies and organizations, including the ILO, subject to the agreement of the General Assembly. States could not initiate advisory proceedings before the ICJ.

204. The Worker members asked the Legal Adviser to clarify the following points:

- whether the ICJ jurisdiction was contentious or advisory in the context of the application of article 37 concerning the interpretation of the Constitution and Conventions, since paragraph 2 of article 37 appeared to provide for both options;
- how to institute proceedings before the ICJ;
- the procedure to be followed for bringing any proceedings before the ICJ and the usual time frame in which the ICJ dealt with questions or disputes relating to the interpretation of Conventions; and
- the specific ways in which member States would incorporate the judgments or advisory opinions of the ICJ in their national jurisprudence and ensure the observance thereof by jurisdictions at all levels.

205. Furthermore, the Worker members raised the question whether the ICJ already had occasion to rule on questions of interpretation of ILO Conventions and thereby completely undo the analysis undertaken by the Committee of Experts.

206. The Worker members also emphasized that the possibility of inserting a "caveat" or "disclaimer" or even a "caution" or "introductory paragraph" in documents originating from the Committee of Experts and based on the reporting obligations under articles 22 and 19 of the ILO Constitution, namely General Surveys and reports of the Committee of Experts, had been referred to several times. That request from the Employer members had no support whatsoever from the Worker members. Indeed, according to the Employer members, the General Survey and the report could not be seen as texts that were authoritative for the tripartite constituents of the ILO. This gave rise to a number of questions: Who had competence to decide on the insertion of such a "caveat"? Could the initiative be taken by the Worker members or the Employer members acting alone and of their own accord? Was a consensus between Worker members and Employer members sufficient? What was the role of Government members? Was an agreement needed among all the tripartite constituents of the ILO? Could one of the constituents impose the "caveat" on the others and, in the event of their refusal, would the work of the Conference Committee be adjourned definitively and thereby jeopardized? Since these issues were highly sensitive, the Worker members asked the Legal Adviser to make a statement in that regard in due course.

207. Finally, the Worker members proposed that the Tripartite Working Group on the Working Methods of the Conference Committee be convened in November 2012 to examine the consequences of the discussions that had taken place within the Committee and to discuss possible action with an eye to the next session of the International Labour Conference in 2013.

G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation

208. The Chairperson submitted, following tripartite consultation, a proposed decision paragraph, which read as follows:

The Committee noted that different views were expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration as found in paragraphs 21, 54, 81–89, 99–103 and 133–224 of this report.

The Committee recommended that the Conference: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session.

209. The Employer members fully supported the proposed decision paragraph and reiterated their optimism that, with calmness and after reflection upon the problems that had arisen, the tripartite constituents would find a solution together. They were relieved and proud that this Committee was taking tripartite responsibility for finding a solution to the clarification of the mandate of the Committee of Experts and the proposed insertion of an introductory paragraph into the reports of the Committee of Experts so as to avoid any misunderstanding in the world of work. It was and would remain the position of the Employer members that the Committee of Experts' mandate was that which had been historically agreed upon on a tripartite basis.

210. Acknowledging the difficulties that the situation had created for the Government members, the Employer members stressed that they had always been, and in the future would always be, willing to supervise those cases that the Committee of Experts considered the worst cases of workers' rights violations. Reaffirming that all members of the Committee could learn from the communication and committee management issues that had arisen this year and could do better in the future, they renewed their total commitment to this Committee and its important work. They indicated that they were looking forward to working with the Worker and Government members during the informal consultations towards a clarification for everyone on the key political, social and economic issue of the right to strike, as there was no bigger industrial relations issue at the national level. The Employer members expressed their resolution and renewed hope that, at next year's Conference, the Committee would announce as of the first day the solution found by the tripartite constituents and that the Government members would be provided with the final list of individual cases by Thursday of the first week.

211. The Worker members stated that they wished to be constructive so that everything could be put in place for the Committee's meetings in 2013 and thereafter. However, being constructive was not the same as being happy or satisfied with this proposal, which was too solemn and impersonal to be able to give justice to workers. The proposal was very important for safeguarding the mission of the ILO and, above all, for preserving the supervisory machinery for the application of standards, even if it did not make up for the fact that far too much time had been lost and that, at the end of the day, none of the cases on the list had been dealt with. It now fell to the Governing Body to take up the complex issue promptly and to good effect.

212. The Worker members emphasized that they would never be able to take a positive view of the events that had stained the Committee's activities over the past week. Nevertheless, the ILO must live and constantly evolve in order to better achieve the objective of social justice that it had embraced since the Declaration of Philadelphia. The previous day, after long and trying negotiations, a proposal had been submitted by the Chairperson for the Committee's approval, according to which the differences of opinion between Worker and Employer members concerning the reports of the Committee of Experts, which had been noted and would be duly recorded, should be resolved as a matter of urgency and, in any case, within a period of time that would allow the required institutional deadlines for the work of this Committee in 2013 to be observed. In that regard, it was important for the questions put to the Legal Adviser to be duly reflected in the record.

213. The Worker members indicated that the proposal had been submitted to the Workers' group and had given rise to heated discussions. There had been immense distress at the events that had occurred. While accepting the proposal and, consequently, the procedure that it envisaged, a number of comments needed to be made. The difficult negotiations and the events that had occurred, including the preliminary contacts, the timing of which had been recalled previously, would leave a negative impression in the memory of the Worker members, as the confidence between the partners had been very seriously tested and even nearly broken. The past days' events would also remain entrenched in the memory of the ILO staff. In that regard, emphasis should be placed on the statement made by the Director-General that morning to the plenary of the Conference, in which he had vigorously defended the integrity of the ILO staff and the impartiality of the experts entrusted with supervising the application of Conventions and Recommendations. [6]

214. The Worker members emphasized that the return of the Worker representatives to their countries would be painful, and at times marked by fear. They had come here to describe cases of violation of their rights guaranteed by the ILO's Conventions, and yet they would return empty-handed, without any conclusions from the Committee, without the support of the international community to build up their courage again when facing harassment, aggression, murder and the violation of their basic right to be treated with dignity by governments and national and international companies. What would the Worker members say to the family and colleagues of Manuel de Jesús Ramirez, the Guatemalan trade union leader murdered on 1 June 2012, on the very day that the Committee was beginning its work? What would they say to the workers of Fiji and their representatives, confronted in their country by a military government which showed no respect for the rights of workers, and for whom the only hope that remained was the ILO and the Committee on the Application of Standards? What would they say to the workers of Greece, Turkey, Colombia, Swaziland, Belarus and other countries? Should one minute's silence be requested in memory of the 25 cases that would not be examined? How would these workers understand the attack against the Committee of Experts, which was described by the IOE press release as an "legitimate request for official clarification regarding the status of the observations" of the Committee of Experts. How would they be able to understand that the attack had had the effect of preventing the list of cases from being examined?

215. The Worker members recalled that since the very first interventions by the Employer members opposing the interpretation of the foundations of the right to strike by the Committee of Experts, they had emphasized that this issue lay within the sole and unique competence of the Governing Body and had proposed that the matter should be referred to it. That proposal would have allowed for the examination of the "list" submitted to the Committee by the Worker members. In addition to the five cases with double footnotes, the list had contained several cases submitted by the Employer members. It should not be forgotten that many employers' organizations had been able to exist and prosper as a result of the work of the Committee of Experts and the Conference Committee on the Application of Standards. The failure to examine the list of cases during the Conference benefited neither the workers nor the employers. Indeed, the failure of the Committee's work would benefit all those who challenged the effectiveness of the ILO and its standard-setting function.

216. The Worker members stated that they would stick to the agreement reached because they had always respected the ILO and had followed the rules of the game of tripartism and social dialogue. It was crucial to continue seeking constructive solutions in spite of

[6] The full text of the Director-General's statement can be found in the *Provisional Record* No. 7, p. 3.

divergence of views and difficult clashes. However, the work entrusted to the Governing Body needed to have a proper framework. The ILO's specificity stemmed from its tripartism which was unique among UN agencies and anything else would be inconceivable. The Committee of Experts, which had been the cornerstone of the supervisory system since 1926, retained the confidence of the Worker members, and its opinions, which although were not legally binding, still had and would always enjoy a high moral authority. As long as these opinions were not contradicted by the ICJ, they remained valid and commonly agreed upon. This essential prerequisite had to be accepted, in particular to ensure the legal certainty necessary for the proper functioning of the ILO. The criticisms addressed to the Committee of Experts with respect to their abuse of authority as regards the interpretation of Convention No. 87 in relation to the right to strike were excessive and indirectly constituted a denial of the jurisprudence of the Committee on Freedom of Association, which was itself a tripartite body. The right to strike was not only a national matter to be dealt with and assessed according to economic or time-bound considerations. Besides Conventions Nos 87 and 98, there was also the International Covenant on Economic, Social and Cultural Rights, as well as several regional texts such as the Charter of Fundamental Rights of the European Union, the European Social Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").

217. The Worker members requested the Committee, after consultation with the Employer members, to consider the following proposal:

In view of the fact that the Committee on the Application of Standards was not in a position to discuss any of the cases enumerated in the preliminary list and in order to avoid any further disruption of the functioning of the ILO supervisory mechanisms, the Committee requests the governments included in the preliminary list [7] to send a report to the Committee of Experts to be examined at its next session.

218. In conclusion, the Worker members underlined that it was only the ILO which allowed for a dialogue that moved forward the rights of the most vulnerable. They indicated that they would work today, tomorrow and thereafter on the observance of the agreement reached.

219. The Employer members agreed with the proposal made by the Worker members provided that it was acceptable to the Government members.

220. The Government member of Canada, speaking on behalf of IMEC, endorsed the proposal brought forward by the Worker members.

221. The Government member of the Bolivarian Republic of Venezuela stated that he respected the position of each of the governments that featured on the preliminary list and understood the reasoning given by the Worker members. With that proposal, which had been put before the Committee at the last minute, and on the basis of all that had happened during the Committee's meetings, the urgent need to discuss and establish clear, objective and transparent standards and procedures for the Committee's methods of work had been demonstrated once again. Doing so could not be put off any longer if the credibility and seriousness of the Committee on the Application of Standards was to be ensured; otherwise, the legitimate rights of governments would continue to be eroded, in the sense that the tripartism of this Organization would be called into question even more.

[7] See Annex 2.

222. The Government member of Cuba, having listened to the proposal made by the Worker members, indicated that she did not oppose it, but expressed concern regarding the last minute nature of this proposal, which could not be subject to consultations among Government members. These events demonstrated the lack of transparency of this Committee's working methods and the urgent need for reform. She sought clarification as to what purpose it would serve this year for the Committee of Experts to examine the information submitted by the governments on the preliminary list.

223. The Government member of the Islamic Republic of Iran reiterated his Government's full commitment to the ILO supervisory system, including the work of this Committee, as well as the importance it attached to the fair and objective, apolitical and impartial analysis undertaken by the Committee of Experts in the context of the well-defined mandate. His Government deeply regretted the non-adoption of the final list of individual cases and the unexpected closing down of the work of this Committee. The recent apologetic events had severely hampered the ability of governments to adequately participate in the proceedings of this irreplaceable mechanism and had therefore adversely affected the fulfilment of the mandate of this Committee. This year's events would go down into the history of the ILO as unfortunate and unforgettable events tarnishing the reputation of its once highly boasted supervisory body and clearly showed the need for a proper review of the procedures on this matter by resuming the work of the Tripartite Working Group on the Working Methods of the Conference Committee established in June 2006, that had held a total of 11 fruitful meetings. Finally, the speaker trusted that this Committee could rely on the constructive collaboration of the social partners on this important matter.

224. The Government member of Brazil expressed the concern of his Government over the situation in the Committee regarding the publication of the list. He emphasized the need to preserve the supervisory system and called attention to the systemic risks of the current situation. He underlined the need to publish the list in time and reiterated GRULAC's call in this regard.

225. The representative of the Secretary-General, in response to the request from the Government member of Cuba, emphasized the importance the Committee of Experts attached to the work of the Conference Committee and the diligence with which it was taking into account the comments made by this Committee. This year's report of the Committee of Experts contained a special section on all the cases previously discussed in the Conference Committee. Given the respect and the deference the Committee of Experts had to this Committee, it was certain that they would take to heart the request by the Conference Committee to examine the cases on the preliminary list, if these reports were submitted in due time, notably by 1 September 2012. She indicated that a number of countries had already provided information that was meant to be submitted to this Committee, and some governments would need to confirm whether this was the most up-to-date information, or whether new information needed to be provided.

226. The Chairperson observed that there was no disagreement from the Government members on the proposals that appear in paragraphs 207 and 216, and as a result, these proposals were adopted.

H. Adoption of the report and closing remarks

227. The Committee's report was adopted as amended.

228. The President of the Conference said that there were clear synergies between the discussions on youth employment, the social protection floor, the fundamental principles

and rights at work and the transcendental mandate of the Committee on the Application of Standards. The Committee was a fundamental part of the ILO's regular supervisory machinery which had been of inestimable value in the development of international labour law and had given unique prestige to a supervisory system of the application of standards that was the most successful that had existed throughout history. He recalled the words of Nicolas Valticos, who had said that the ILO's founders had set up from the first days a precise mechanism to monitor compliance with the standards to be drawn up by the Organization and that it was acknowledged that the ILO's supervisory functions were the most highly developed in the international arena due to the participation of employers' and workers' organizations, and the qualities of independence and expertise of the members of the supervisory bodies. He added that, on the occasion of the 85th anniversary of the Committee, it had been emphasized that the Conference Committee still offered "a potential that has not been totally exploited. Its tripartite and universal nature, its parliamentary role and its undeniable authority confer upon it an importance that is of great significance and make it the cornerstone of the ILO supervisory system". He reaffirmed that it would be difficult to understand the functioning of labour and constitutional law without the influence of the jurisprudence of the ILO supervisory bodies. The General Survey on the ILO's fundamental Conventions, entitled "Giving globalization a human face", could be considered unprecedented in the ILO and in the world of work as it emphasized the interdependence and complementarity of the fundamental Conventions and their universal applicability, thereby offering an ILO response to globalization. However, he expressed concern at the difficulties surrounding the work of the Committee and hoped that the situation would result in reflection and that solutions would be found that would enable the social partners to find a direction in the context of their views and mandate. He made a call for the dialogue that had served the Committee with a view to preserving and strengthening a unique body in the international arena and he offered his support for any initiative that would reinforce the future work of the Committee.

229. The Worker members said that this year their concluding remarks would be different, as they would not have to evaluate the conclusions adopted by the Committee during its discussions of individual cases. They strongly deplored the serious incidents that had prevented the Committee's work from being carried out. However, a common solution had been found and would need to be given effect in good faith and rapidly. Firstly, it was now for the Governing Body to follow up rapidly the decision adopted by the Committee on 6 June 2012. The differences of views between the Worker and Employer members concerning the reports of the Committee of Experts would have to be resolved on an urgent basis, and in any case sufficiently in advance to allow the timetable of preparations to be followed for the holding of the Committee on the Application of Standards in 2013. Secondly, the 49 countries that were on the preliminary list were expected to provide a report, at the latest by 1 September 2012, containing replies to the comments of the Committee of Experts with a view to avoiding any interruption in the continuity of the supervisory bodies.

230. The Worker members recalled that the General Survey and the work of the Committee on the Recurrent Discussion were linked under the process established in the ILO Declaration on Social Justice for a Fair Globalization of 2008. The Social Justice Declaration needed to be taken seriously and was not just one more procedure. It emphasized the unique comparative advantage and the legitimacy of the ILO based on tripartism and the rich and complementary practical experience of its tripartite constituents in addressing economic and social policies affecting the lives of people. It had been adopted to reinforce the capacity of the ILO in relation to the objectives of the Declaration of Philadelphia and was based on the four strategic objectives that were of equal value. The recurrent discussion this year had addressed compliance with, promotion and implementation of the fundamental principles and rights at work, while the General Survey covered the same fundamental principles and rights at work, as set out in the eight fundamental Conventions.

In order to emphasize the links between the supervisory work entrusted to the Committee on the Application of Standards under articles 19 and 22 of the ILO Constitution, and that of the Committee on the Recurrent Discussion, the Committee on the Application of Standards had been expected to transmit common conclusions to the Committee on the Recurrent Discussion. However, the attack carried out by the Employer members against the General Survey had prevented the Committee on the Application of Standards from presenting its views to the Committee on the Recurrent Discussion, which had not therefore been able to work fully within the framework envisaged by the 2008 Declaration. That raised a political issue that the Office would have to evaluate when assessing the impact of the 2008 Declaration. They greatly regretted the impact of the incidents in the Committee on the Application of Standards on the work of the Committee on the Recurrent Discussion. And yet, it had seemed that tripartite consensus could have been achieved on a message to be transmitted to the Committee on the Recurrent Discussion. In practice, the Employer members did not appear to be opposed to Convention No. 87 as such. Their concerns were related to the fact that, in the view of the Committee of Experts and of the Worker members, the right to strike was based on the Convention. They therefore considered that the interpretation by the Committee of Experts of the right to strike was exaggerated and unjustified. Apart from that, the Convention was unchallenged and was also the basis of the right to organize of employers. Over and above that, could the Committee reaffirm that the eight fundamental Conventions were more topical than ever in the context of the global economic crisis and the other challenges affecting the well-being and livelihoods of workers in all regions? Could the members of the Committee say jointly that, in the context of the crisis and the austerity plans of many governments, it was essential for recovery measures to be designed taking into account the fundamental Conventions? Was it not possible to issue a joint invitation to the Governing Body to prepare a plan of action covering the period up to 2015 for universal ratification of the fundamental Conventions, targeting in particular the 48 member States that had not ratified all of the fundamental Conventions and encouraging States with the highest populations to ratify the eight Conventions? Could a joint request not be made for sufficient resources to ensure the provision of technical assistance by the Office on issues relating to ratification and application in practice? Would it not be possible to make a joint call for an effective increase in social dialogue on the implementation of the fundamental Conventions and for social dialogue to be more effective? The failure of the Committee's work in relation to the eight fundamental Conventions was a matter of concern for the future. The General Survey in 2013 would cover the standards on social dialogue in the public service. The General Survey for 2014 would be on wages. Would fresh difficulties arise? Would it be claimed that wages should not be protected and were no more than an economic variable in the quest for profit?

231. The Worker members, with reference to the geopolitical context of the violation of workers' rights, said that they could not remain silent concerning the cases that had not been examined by the Committee. However, they would not endeavour in a few minutes to make up for all the work that had not been carried out by the Committee. The sole objective was to do justice in a very incomplete manner to the Worker members who had come to Geneva in the hope of being able to speak about their everyday experience of repeated violations of their rights as guaranteed by ILO Conventions. They would be returning home empty handed, without being able to describe the practices in their countries in relation to the application of the Conventions ratified by their governments. They would be returning without the Committee's conclusions, even though they were often the official signal of the support of the international community and of its wish to help them with a view to bringing an end to situations of harassment, aggression, murder and the violation of their rights. The Worker members indicated that they had organized within their group, at their own initiative, an examination of some of the five so-called double footnote cases, as well as certain other very serious cases in meetings that the other groups had been free to attend. That had not constituted an examination of the cases, but

had placed the degradation in the situation of workers the world over in context. Their list of cases had included several of the 27 Member States of the EU, and particularly Spain for the Termination of Employment Convention, 1982 (No. 158), Romania for the Protection of Wages Convention, 1949 (No. 95), and Greece for the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The World of Work Report 2012, published recently by the ILO, indicated that the narrow vision among many countries in the Eurozone concerning budgetary rigour was deepening the employment crisis and could even result in a new recession in Europe. The priority given to a combination of budgetary austerity and drastic labour market reforms had resulted in a dangerous employment crisis in Europe. The European Commissioner for Employment, Social Affairs and Inclusion, Lazlo Andor, had very recently confirmed that approach when he had wondered whether the medicine proposed in many Member States of the European Union was "curing or killing the patient". The examination of the three cases would have provided an opportunity to assess the practical impact of the reform policies adopted in many European Union countries. It would have shown whether such reform policies still allowed governments to consider that they were in compliance with ILO Conventions. The three cases concerned wages and their negotiation, measures relating to the termination of the employment relationship and their negotiation and, in more general terms, attacks on the autonomy of the social partners and the development of the decentralized bargaining model at the enterprise level. In addition to those cases, reference would have been made to government attacks against workers in the name of budgetary orthodoxy and rigour at any price in public finances. The question would have arisen of the deregulatory role of the European and international financial institutions, which believed themselves above ILO Conventions and placed governments under pressure. The ITUC's 2012 annual report on violations of trade union rights, published a few days ago, highlighted the violations of Convention No. 87 that the Worker members had placed on their preliminary list of cases. The Committee of Experts had also commented on those cases, on some occasions emphasizing the recurrent and almost traditional nature of the failures noted.

232. The trade union rights of workers were violated throughout the world, which was why the issue arose each year of the selection of too many cases concerning Convention No. 87, without even referring to the question of strikes. The Worker members assured the Committee that they would like not to have to select so many of those cases. They referred to the situation in export processing zones, which was not limited to certain geographical areas, but applied at the sectoral level, as well as the experiments with solidarist associations in Europe which were being carried out with the sole objective of destroying the trade union movement. They also referred to the cases of Fiji and Guatemala – where physical reprisals against Worker members were to be feared – as well as those of Myanmar, Swaziland, Zimbabwe, Turkey, Algeria, Belarus (which was a historical case for the Committee, and where nothing was changing) and Colombia where, although there had been some progress, 29 trade unionists had died in 2011. They also referred to the case of Egypt and recalled that in 2011, the Ministry of Manpower and Migration had emphasized the value of social dialogue between governments, employers and workers with a view to achieving social peace and creating a climate conducive to economic development. One year later, none of that had been achieved. The Worker members also referred to the case of Mexico in relation to the Occupational Safety and Health Convention, 1981 (No. 155), which had been examined by the Committee for several years, including in 2011, where nothing had changed. They also recalled that 2011 had been spectacular in being characterized by democratic movements in the countries of the Middle East and North Africa, including Egypt, as noted previously. In the view of the Worker members, it would also have been important to highlight the persistent violations of Convention No. 111 in Saudi Arabia, which was a model for all of the Arab Emirates. Moreover, discussion of other cases would also have been fully justified. They indicated that they were still concerned at the numerous violations of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and that the case of Paraguay appeared to them to be

particularly significant in relation to violations of the rights of indigenous and tribal peoples. The Government and Employer members had accepted the idea of requesting the governments on the preliminary list to supply a report by 1 September 2012. The cases referred to previously were a sample of the most worrying cases for which a full report was required. The Worker members indicated that they had been mortified by the discussions. The preparation of a final list of cases had been impossible in 2012. The solution for the future depended on the work entrusted to the Governing Body following the agreement reached within the Committee. A solution would need to be found by March 2013.

233. In conclusion, the Worker members thanked the Chairperson and Rapporteur of the Committee, the Chairperson and members of the Committee of Experts. They also thanked the Government members of the Committee for their cooperation. Without their support, it would not have been possible to reach an agreement. The result obtained was owned by the tripartite members of the Committee, and it was to be hoped that it would mark the beginning of the path towards a lasting solution. Finally, they called on the members of the Committee to approve its report so that it could be submitted to the Conference Plenary.

234. The Employer members stated that this had been an unusual year for the Committee, and refuted rumours suggesting that any victory had been won. Nobody had won this year. The purpose of this Committee was to discuss individual cases on alleged violations of ratified Conventions. There had been no list of individual cases this year. The Employer members would also have liked to have cases to be heard in this Committee, such as Serbia (Convention No. 144), Uruguay (Convention No. 98) and Uzbekistan (Convention No. 182); all tripartite constituents had wanted to have cases heard. The Employer members indicated that they had won nothing and emphasized that all social partners had failed in this regard. However, they had been able to raise an important point on the work of the Committee of Experts and of the Conference Committee. Responding to earlier comments that these issues should have been raised earlier, they indicated that they had actually been doing this for many years. Referring to the discussion of the Conference Committee held in 1991, they highlighted that the Employers members, had, at that time, raised the issue and had noted that dialogue could include both criticism and praise; they had also noted that, in their view, the interpretation that Convention No. 87 included the right to strike was not correct. Similar issues had been raised again by the Employer members in both 1994 and in 1998. The reports of the Conference Committee also showed that since 2000, the Employer members had consistently stated that the Committee of Experts should not extend to definitive interpretations of ILO Conventions and that its interpretation that Convention No. 87 implicitly included the right to strike was, in their view, wrong. Convention No. 87 never contained this right.

235. The Employer members concluded by thanking the Chairperson, the Representative of the Secretary-General and the Secretariat, and also thanked the Worker members, and especially the Worker spokesperson for his collaboration. The speaker further thanked the Governments for having to put up with everything, and emphasized that it had never been the intention of the Employer members to cause any inconvenience.

236. The Chairperson of the Committee indicated that, with the end of its work, the Committee was entering a sabbatical period that called for reflection, planning and preparation for the future. The Committee had given indications that changes were necessary. For the first time, the examination of individual cases had been interrupted. Nevertheless, the Committee's objectives, which were the quest for peace, equality and liberty for a better world, were continuing without interruption. The difficult task of finding solutions to make a leap forward and to improve the work of the Committee was a tripartite challenge that would start immediately and it was hoped that more positive results would be achieved in the future. The eyes of the world were on the Committee, and this year it had not had any answers to offer. Countries would not be benefiting from technical assistance to improve

compliance with standards as a result of the discussions of the Committee. He emphasized that it was not the time to think in terms of winners and losers. Everybody had the responsibility to carry forward a constructive discussion on the questions that had arisen and which were reflected in the report adopted by the Committee. It would be necessary to rebuild confidence within the Committee, recuperate and improve the basis for its work and to work for the benefit of standards by pursuing the common objective of peace, social justice, decent work, sustainable enterprises and freedom at all levels. He thanked the members of the Committee, the Secretariat and the interpretation services for their cooperation and work during the session.

Geneva, 12 June 2012

(Signed) Mr Sérgio Paixão Pardo
Chairperson

Mr David Katjaimo
Reporter

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PART ONE

Date: Thursday, 15 June 2017

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

Contents

1 September, which disturbed the sound operation of the regular supervisory procedure. Moreover, the Committee of Experts had called on all governments to ensure that copies of reports on ratified Conventions were communicated to the representative employers' and workers' organizations so as to safeguard this important aspect of the supervisory mechanism. As regards ways of increasing the visibility of its findings by country, the Committee of Experts had underlined the available electronic means, in particular the NORMLEX database, and the important practical guidance given to member States through technical assistance. In this context, the Committee of Experts had reiterated its hope that a comprehensive, adequately resourced technical assistance programme would be developed in the near future to help all constituents improve the application of international labour standards in both law and practice. Lastly, the speaker drew the Conference Committee's attention to the cases, identified by the Committee of Experts, in which, in view of the seriousness of the issues addressed, the governments concerned had been requested to provide full particulars to the Conference (paragraph 48 of its General Report).

36. Finally, the Chairperson of the Committee of Experts gave the assurance that the latter was firmly engaged in the path of meaningful dialogue with the Conference Committee and all other ILO supervisory bodies, in the interest of an authoritative and credible supervisory system and ultimately for the cause of international labour standards and social justice worldwide.

Statement by the Employer members

37. The Employer members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of this Committee. They welcomed the 2017 report of the Committee of Experts and highlighted three positive elements in that report. Firstly, the mandate of the Committee of Experts had been reproduced in paragraph 17 of its General Report, thus helping to clarify that its opinions and recommendations were not legally binding for member States. Secondly, the Employer members noted with satisfaction that most of the conclusions adopted last year had been followed up in the meantime by Office assistance, for instance by direct contacts missions and the provision of technical assistance and advice. They agreed with the Worker members that the cases discussed by the Conference Committee should be included in a special section of the Committee of Experts' report. In this regard, there was a need to apply more realism in standards supervision by making greater efforts to assess the implementation of ratified Conventions in the light of the specific circumstances of the respective countries and acknowledge the progress that could realistically be expected within a particular period of time. Assessments and recommendations for rectification in standards supervision and other means of assistance at the ILO's disposal should mesh without leaving gaps. Thirdly, the systematic reference made by the Committee of Experts in its observations to the discussions and conclusions of the Conference Committee reflected growing integration of the activity of the two main supervisory bodies, which constituted a key positive development. With reference to the continuous reproduction of considerations of the Committee on Freedom of Association in certain observations on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and on Convention No. 98, the Employer members recalled the distinct mandates of the Committee of Freedom of Association and the Committee of Experts and the fact that the Committee of Experts was called upon to analyse, in certain cases, only the legislative aspects of the Committee on Freedom of Association cases.

38. The Employer members further made a number of constructive proposals to make standards supervision more effective, transparent, relevant and sustainable: (i) in view of the need to make the report of the Committee of Experts more reader-friendly, transparent and relevant, the Employer members, observing that the outcome of the Committee of Experts' subcommittee on working methods was not reproduced in the report, proposed to set up a

joint working party of members of the two bodies to look into further improvements; alternatively, members of the Committee of Experts could be invited to participate in special meetings with members of the Conference Committee to examine possible enhancements of its working methods. In this way, the cooperation between the two pillars of the regular supervisory system, and hence its effective functioning and cohesion, could be strengthened; (ii) it would be desirable that the text of all submissions made by employers' and workers' organizations to the Committee of Experts be made available via a hyperlink in the electronic version of its report and on the NORMLEX website, should the organizations so desire; (iii) as stated in the 2017 Joint Position of the Workers' and Employers' groups, it was expected that mission reports regarding the Committee's conclusions, or a summary with the non-confidential concrete results of the mission, be published in NORMLEX; and (iv) the dedicated web page for the 2017 Conference Committee should be further expanded, for instance by adding information concerning the tripartite deliberations, including written submissions made by constituents.

39. Finally, the Employer members raised three issues of concern in the report of the Committee of Experts. Firstly, given the increase in the number of cases of serious failure to report as compared to last year, they suggested an in-depth discussion and specific measures to be considered in the next working methods meeting of the Conference Committee. The Employer members inquired as to the concrete measures taken by the Office to ensure fuller submission of reports and responses to the Committee of Experts' comments, specifically in regard to those countries with a long history of failure to report. Secondly, they expressed concern at the heavy workload of the Committee of Experts owing to the ever-rising number of ratifications and reports to be examined. Measures used so far, such as extending reporting intervals, seemed to have been stretched to their limits. It was necessary to focus reporting on essential regulatory issues in ILO Conventions and to consider concentration, consolidation and simplification of the standards system and its supervision as a sustainable way forward. The Employer members had high expectations in this regard concerning the work of the Standards Review Mechanism Tripartite Working Group. On the basis of the information in paragraph 38 of the report, they inquired how many reports had not been brought to the Committee of Experts' attention because of lack of time or resources and what measures would be adopted to avoid the examination of reports with outdated information. Thirdly, the Employer members reiterated their belief in fundamental principles and rights at work, including freedom of association, as the foundation for democracy. At the same time, they emphasized their disagreement with the direct connection created by the Committee of Experts between Convention No. 87 and the regulation of the right to strike, as well as the ensuing extensive interpretation in this regard. They highlighted the fact that, out of 64 observations, 45 dealt with the right to strike and that, out of 62 direct requests, 51 dealt in one way or another with the "right to strike" and that, out of these 51 direct requests, 22 dealt exclusively with the right to strike. The Employer members were therefore bound to reiterate their deep concern that the right to strike remained a major, and possibly the main, issue of the supervision of Convention No. 87. Given that the Committee of Experts had continued to reaffirm its position in this respect, they were obliged to continue expressing their divergent views so as to avoid any misunderstanding in the form of tacit acceptance. Observing that the Committee of Experts' interpretations on the subject had enjoyed limited support from the Government group at the March 2017 discussions of the Governing Body, the Employer members emphasized that requests of the Committee of Experts to align national law and practice on this controversial matter were non-binding, and that there was no reporting obligation for governments to provide information concerning law and practice on the right to strike. Finally the Employer members highlighted that the conclusions of the Committee on the Application of Standards would not contain requests linked to the controversial observations on the right to strike and that the Office's technical assistance and follow-up of the conclusions would need to focus exclusively on the consensus agreed among constituents.

Statement by the Worker members

40. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee. The annual report of the Committee of Experts offered a global perspective on the implementation of international labour standards in that it compiled governments' reports on the application of standards and also a significant number of observations made by workers' and employers' organizations. Because of its independence and the quality of its analysis, the Committee of Experts was able to promote in specific ways the observance of international labour standards and the application thereof in the countries concerned, and the Conference Committee was able to perform substantive work by enriching those standards with the interventions of its various groups. Moreover, the General Surveys of the Committee of Experts cast light on the prospects for the development of international labour standards. In view of the quantity of information to be processed, the extensive, high-quality work of the Committee of Experts was to be commended.

41. However, the Worker members made some suggestions with a view to improving the quality of the report. Among other things, they suggested that the observations made by the social partners, which in many cases contained information that could enrich the examination by the experts, should be reflected more widely in the report. Moreover, the Worker members were struck by the tone of the report in certain respects: some comments that had been made for a number of years had disappeared even though the problematic situation remained. The tone adopted was sometimes very mild given the seriousness of the violations described. Some comments were so short that they made the task of selection and preparation of cases difficult. Lastly, the Worker members expressed regret that numerous important elements appeared in direct requests and not in the observations of the Committee of Experts. In order to improve readability in certain cases, it was suggested that such information be reproduced in the report of the Committee of Experts.

42. The Worker members' remarks regarding the Committee of Experts' report should be taken constructively; they did not call into question the action of the Committee of Experts, in relation to which it was necessary to acknowledge a certain amount of interpretation with respect to evaluating the conformity of national legislation and the application thereof with international labour standards. Moreover, the aim of uniformity in the observations of the Committee of Experts was to help ensure legal certainty for member States and to guaranteeing a certain predictability. Lastly, the collegiate composition of the Committee of Experts, whose members originated from regions with different legal, economic and social systems, ensured balanced, independent and impartial work, thereby reinforcing the authority of the observations and recommendations made. The Worker members wished to express once again their confidence in the work of the Committee of Experts and indicated that the workload of the latter would be one of the aspects considered when evaluating and improving the working methods of the ILO supervisory mechanisms with a view to strengthening them.

43. The Worker members wished to respond to the comments of the Employer members on the treatment of the right to strike in the Committee of Experts' report. While recalling the joint position adopted by the Workers' and Employers' groups in February 2015, which was reaffirmed at the Governing Body in March 2017, and also the statement of the Government group, the Worker members reiterated that their position on the right to strike in the context of Convention No. 87 had not changed; they considered that the right to strike needed to be recognized in the context of the aforementioned Convention since that right was linked to freedom of association, which was a fundamental right and principle of the ILO. However, it had never been a question of the Worker members claiming that the right to strike was absolute; if evidence of that was required, it sufficed to consult the numerous consensual decisions adopted in that regard within the Committee on Freedom of Association.

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ILC, 107th Session, 2018, Report of the Committee on the Application of Standards, paras 46, 51

International Labour Conference

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107th Session, Geneva, May–June 2018

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PART ONE

Date: Thursday, 7 June 2018

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

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45. The Employer members also raised a number of concerns relating to the regular supervision of standards: (i) given the continued failure of many governments to comply with their reporting obligations, they trusted that the present efforts to streamline reporting, including extending the possibilities for e-reporting as considered by the Governing Body in March 2018, would facilitate reporting and increase reporting rates in the future. Nevertheless, more fundamental steps were needed to respond to this issue. In particular, consolidation, concentration and simplification of ILO standards themselves would be required. This had already been achieved to a significant extent in the field of maritime labour standards, and it was hoped that the work of the Standards Review Mechanism Tripartite Working Group would also lead to progress in this respect in other standards areas; (ii) the criteria concerning the differentiation between observations and direct requests as described in paragraph 41 of the Committee of Experts' report, in particular, the criteria termed "primarily of a technical nature", for direct requests and "important discrepancies" for observations, were not entirely clear and gave rise to some confusion. In many cases, it was difficult to understand why a comment had been classified in the chosen category as opposed to the other. This was important because direct requests were not included in the report of the Committee of Experts. By making comments and recommendations to governments in the form of direct requests, a major part of the substantive issues relating to the application of ratified Conventions was removed from tripartite supervision. The Employer members therefore called on the Committee of Experts to make all comments that concerned compliance issues and respective recommendations in the form of observations; (iii) the Employer members also expressed concern with regard to the decision of the Committee of Experts to depart from the regular reporting cycle in some cases and not in others. While they recognized the discretion of the Committee of Experts in this respect, they also emphasized that, in the spirit of good governance, there should be transparency surrounding the reasoning when the reporting cycle was altered. In future reports, relevant information on similar cases should be provided by the Committee of Experts; and (iv) the Employer members raised concerns with regard to the discrepancy that might arise between the Conference Committee's conclusions and the comments of the Committee of Experts, referring to a case in relation to which the Committee of Experts had noted with satisfaction action taken by the Government that clearly disregarded the Conference Committee's own conclusions; they called upon the Committee of Experts, when making assessments, to duly take into account the conclusions of the Conference Committee which reflected tripartite consensus.

46. The Employers members reiterated their belief in fundamental principles and rights at work, including freedom of association, as the foundation for democracy. At the same time, they emphasized their continued disagreement with the direct connection made by the Committee of Experts between Convention No. 87 and an explicit right to strike, and with its broad interpretation in this respect. They highlighted the fact that, in the Committee of Experts' Report, out of 49 observations on Convention No. 87, 33 dealt in one way or another with the right to strike, which included comments that dealt exclusively with the right to strike. The Employer members wished to put on record that they did not recognize the Committee of Experts' interpretation of a right to strike under Convention No. 87 and that they firmly maintained their dissenting position on this issue. Additionally, they expressed concern about the frequent reference by the Committee of Experts to cases examined by the Committee on Freedom of Association. They stressed that the Committee of Experts and the Committee on Freedom of Association had different legal bases and mandates. While the situations that the Committee on Freedom of Association and the Committee of Experts were confronted with might often be similar, the important differences between the two procedures should not be disregarded when making such references.

Statement by the Worker members

47. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee. They observed that the world was currently experiencing upheaval in several respects: (i) the globalization of the economy was allowing the free movement of capital with the sole objective of achieving profit, which often had detrimental social and environmental consequences; (ii) climate change and environmental issues would give rise to an increasing number of work-related problems; and (iii) armed conflict was laying waste to certain whole regions. Those three phenomena were closely linked and were behind the massive migratory flows which were raising fundamental questions concerning how work-related issues should be addressed in a context which was also characterized by the emergence of authoritarian regimes in certain countries that were not very respectful of civil liberties and fundamental rights. The problems that arose in that regard constituted challenges for the ILO, in which the Committee had an important role to play as one of the two pillars of the Organization in the supervisory system for international labour standards, alongside the Committee of Experts.

48. The Worker members welcomed the extensive references in the report of the Committee of Experts to the conclusions of the Conference Committee, which was a significant development. They suggested, however, that the Committee of Experts might examine in greater detail the manner in which each of the recommendations was given effect by the governments concerned. They also welcomed the initiative by the Committee of Experts to ensure a better balance between the various types of Conventions in the selection of cases with a double footnote. The Committee of Experts should pay as much attention as possible to the so-called technical Conventions.

49. The Worker members shared the concern of the Committee of Experts in relation to the backlog accumulated by many governments in presenting their reports. Only 38.2 per cent of the reports requested had been received by 1 September 2017, which was a lower rate than the previous year. Such delays were detrimental to the quality of the work carried out by the Committee of Experts. They therefore called on governments to comply with their reporting obligations within the required time limits. They were however aware of the fact that such failings were not always intentional, but were due to practical difficulties. The technical assistance provided by the Office in this respect was valuable and reflection was required on the best way in which it could be reinforced. They also echoed the comment by the Committee of Experts that several governments were still not fulfilling their obligation to communicate the reports beforehand to workers' and employers' organizations. Those cases of failures offered an indication of the importance accorded to dialogue and concerted social action in the countries concerned.

50. Responding to certain proposals made during the discussions, the Worker members indicated that: (i) the observations in the Committee of Experts' report were directed at stakeholders who were accustomed to the particular vocabulary used, the governments and the social partners and should therefore respond only to the need for clarity and precision. The Employer members' proposal to simplify the vocabulary used in the Committee of Experts' report should therefore be subject to an in-depth discussion; (ii) they did not support the Employer members' proposal to publish the observations communicated to the Committee of Experts by workers' and employers' organizations which so agreed, as that risked undermining the discretion and independence of the Committee of Experts; (iii) the explanation of the circumstances that could result in an interruption of the reporting cycle in paragraph 64 of the Committee of Experts' report seemed clear and sufficient. Such circumstances constituted safeguards intended to maintain the effectiveness of the regular supervisory system; and (iv) the opportunities for exchanges between the Conference Committee and the Committee of Experts, which were already in place, were sufficient and it did not seem necessary to set up more.

51. Responding to the comment by the Employer members, who had recalled their position concerning Convention No. 87 and the right to strike, the Worker members wished, in turn, to recall that they considered that the right to strike was recognized within the framework of Convention No. 87. That right was related to the exercise of freedom of association, which was not only a fundamental ILO principle and right but also a fundamental element of all democracies. In that regard, the Worker members recalled that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association had indicated that the right to strike was enshrined in international law and that its protection was necessary to ensure fair, stable and democratic societies. They recalled the constructive and concerted work carried out in the Committee since 2015 to establish effective regular supervisory mechanisms and hoped that those mechanisms would continue to be strengthened, beyond differences in viewpoints, in order to achieve the objectives of the ILO.

Statement by Government members

52. The Government member of Bulgaria, speaking on behalf of the European Union (EU) and its Member States, the candidate countries Montenegro, Serbia and Albania, the potential candidates Bosnia and Herzegovina and Georgia, emphasized that the regular and successful monitoring of the application of international labour standards was crucial to ensure the mandate and authority of the ILO and welcomed the recent changes made to the functioning of the Conference Committee. Given that the improvement of the working methods of the Conference Committee was under way, she made a few comments and recommendations in that connection: (i) issues covered by the complaints procedure under article 26 of the ILO Constitution should, to the extent possible, not be discussed in the Conference Committee to avoid duplication; (ii) assessing the seriousness of some cases, based on the report of the Committee of Experts, was sometimes challenging, particularly when the report did not contain up-to-date information, and she therefore strongly encouraged governments on the preliminary list to provide the Office with any available information once the list was issued, which should be shared with all ILO constituents. In this respect, it would be useful to have a clear assessment of each case by the Committee of Experts on the situation. In some cases, the assessments in the report related only to specific aspects, which did not provide a clear overall picture of the level of compliance with the Conventions in question. In other cases, the Committee of Experts only referred to the observations of the social partners and it was difficult to evaluate the seriousness of the situation from the report; (iii) while the constraints of the Workers and Employers relating to internal consultations were understandable, having the final list of cases when the Conference Committee had already started made preparation more complicated. It was therefore essential to have available, for each case discussed in the Conference Committee, a clear description of the issue at stake, along with the most up-to-date information and opinions of the Committee of Experts to allow for an informed and fruitful discussion; (iv) General Surveys should assist and inform the discussion of the Standards Review Mechanism Tripartite Working Group, in its task to update and modernize the body of Conventions and Recommendations. Outcomes of the Tripartite Working Group discussions could also feed into the General Survey discussion of the Conference Committee. The results of the discussions in the Standards Review Mechanism Tripartite Working Group and on the General Surveys could then be communicated to the Governing Body for further discussion.

53. The Government member of Brazil supported the request made by the Employer members that information should be provided by the Committee of Experts in relation to each individual case where it had departed from the regular reporting cycle. He emphasized that this would respond to the need for transparency and enhanced legal certainty in the existing supervisory procedure.

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Date: 16 June 2023

Part One

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

Part One

General Report

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Adoption of the list of individual cases

38. The Committee adopted, during the course of the opening sitting, the list of individual cases to be discussed. [3]

39. **Worker members:** We welcome the adoption of the list. Without being an exact science, its formulation tries to take into account certain criteria such as regional balance, the nature of the Conventions or the degree of seriousness of the situation. My Employer counterpart and I will be at the disposal of the governments for the explanatory meeting that is scheduled immediately after our session.

40. The need to take several criteria into account means that many cases that appear on the preliminary list deserve to be on the final list but are not. There are a few to which I would like to draw particular attention. The case of China continues to hold our full attention. The written information supplied by the government after the publication of the preliminary list contains some interesting details. We note that the government is committed to implementing our Committee's conclusions, which date back to last year. We hope that this will be done as soon as possible and that they will be fully implemented.

41. I would also like to express the concern of the Worker members about the situation in Tunisia. Freedoms in the country continue to be restricted. Trade union freedoms, in particular, are being seriously curtailed. The practices that we are observing are detrimental to the interests of Tunisian workers and violate their rights. The Tunisian Government cannot ignore the fact that the trade union movement in the country has always been a driver and guarantee of stability. We therefore call on it to respect individual freedoms, and in particular freedom of association. Lastly, we would like to raise the case of France, where protection against unfair dismissal has been severely limited, as part of a more general undermining of workers' rights in the country, which heightens our concerns. I reiterate my hope that all parties will approach the discussion of the 24 cases in a constructive and respectful manner.

42. **Employer members:** Like the Worker members, we too are satisfied that the list of cases has been adopted. As everybody knows, this is a negotiated list and therefore represents compromises that had to be made regarding the cases that will be heard and the ones that will not. Ideally, we would have liked to hear the Committee examine more cases of progress. Nepal is the only example on this year's list that would come under that heading. We would like to see more cases where compliance with Conventions would enhance the creation of a sustaining and sustainable environment for business growth and job creation. In respect of fundamental Conventions, we note that there are no Conventions on occupational safety and health (OSH) on the list this year, which is a pity given that last year we celebrated the elevation of OSH to the status of fundamental principles and rights at work.

43. Conversely, we feel that certain cases should not have been included in the list. I won't go into the details because these will become apparent when these cases are discussed. Our concerns relate to the fact that each has characteristics that deviate from the core mandate of this Conference Committee, which is to examine compliance with the specified Convention. Broadly speaking, these cases fall into three main groups: (i) where discussions to address certain issues of application are already well advanced at the national level; or (ii) where discussions have previously taken place in the Conference Committee and the details haven't changed; or (iii) where cases concern issues that exceed the ambit of ILO Conventions, for instance the prevailing political environment in the country. In our view, this Committee should be focused

[3] International Labour Conference, 111th Session, Committee on the Application of Standards, CAN/D.2.

on examining a case strictly in the context of the Convention that is the subject of the Committee of Experts' report. Allowing ourselves to drift from this focus invites criticism of the relevance and effectiveness of our work that none of us wants.

44. Secondly, and at the outset of our work, I would like to remind the Committee that as in previous years, any issues referring to a right to strike in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which, as we all know, has been contentious, will not be included in the conclusions of cases. This will apply in this year's context to the cases of Guatemala, Liberia, Madagascar, Netherlands–Sint Maarten, Nicaragua, Peru, the Philippines and the United Kingdom of Great Britain and Northern Ireland. As many of you will recall, in previous Committee sessions we have expressed our concerns with the Committee of Experts' extensive, yet non-binding, assessment of Convention No. 87 on this point. We have pointed out on many occasions the legislative history of Convention No. 87, documented in the proceedings of the International Labour Conference. It is clear from these records that the proposed Convention related only to freedom of association and not to the right to strike.

45. Having commented briefly on the areas of concern, let me turn to what we would like to see in the future, albeit in general terms. Overall, we want to see a balanced list of cases as we also heard from the Worker members. This balance would take into account regional spread, different types of Conventions (fundamental, priority, governance and technical), as well as balance between those of primary interest to Worker and Employer members respectively. Such a list can provide enhanced benefits because the guidance derived across a broader range of Conventions is likely to be of benefit to a broader range of countries in a given reporting cycle. This should also include a number of cases of progress. We need to show the global community that the Committee not only deals with issues of non-compliance but can also contribute to improvements in the application of ILO Conventions. With these remarks I commit to working constructively with our social partners in addressing the cases we have before us now. As I said at the outset, the Employer members accept the list of cases.

B. General questions relating to international labour standards

Statement by the representative of the Secretary-General [4]

46. **Representative of the Secretary-General:** As the representative of the Secretary-General for your Committee, I have the privilege of leading the team that stands ready to provide you with all necessary assistance to ensure that the Committee functions smoothly and effectively.

47. At the outset, I would like to thank Professor Ago, the Reporter of the Committee of Experts on the Application of Conventions and Recommendations, and Professor Evance Kalula, Chairperson of the Committee on Freedom of Association, who will address your Committee to present the reports of their respective committees.

48. My brief intervention will cover two main points: (i) the constitutional mandate and work of your Committee; and (ii) a brief up-date of key developments in respect of the ILO's normative work.

49. Your Committee is a standing committee of the International Labour Conference. Since 1926 when it was established, the Committee has met at each session of the International Labour

[4] International Labour Conference, 111th Session, Committee on the Application of Standards, CAN/D.3.

level of collective bargaining, whether Article 4 provides for a hierarchy of norms according to which collective agreements cannot depart from applicable legislation; whether there is a legal obligation for employers to negotiate under Article 4, or whether compulsory arbitration on the sole initiative of a workers' organization is compatible with the voluntary nature of collective bargaining as reflected in Article 4; whether a country has the right to dictate when a collective agreement should exist, and whether only a union should decide whether a collective agreement should exist and the scale and scope of it. These are major questions that we have – there are obviously many more.

93. With respect to the question of the right to strike in the context of Convention No. 87, the Employer members noted that in the Committee's report, out of the 63 observations on this Convention, 49 relate partly or exclusively to the right to strike. Moreover, out of 42 direct requests, 35 also deal, in one way or another, with the right to strike. We have recognized that the right to strike has significant relevance for national and industrial relations systems and that countries have established varied and specific legislative practices to deal with this issue. We would nevertheless recall that the detailed interpretation and assessments by the Committee of Experts on the right to strike have no basis neither in the text nor in the legislative history of Convention No. 87. We would also like to remind the Committee of Experts of the view of the Government group in the Governing Body, according to which the conditions and practice of the right to strike is to be defined at the national level. In view of the recent discussion on a possible referral of this contentious issue to the International Court of Justice the Employer members are more than ever convinced that a realistic and sustainable solution can only be found through discussion within the ILO's tripartite fora and procedures. As the interpretation of the Committee of Experts and the Office is at the origin of this dispute, we once again respectfully call upon them to contribute to the search for a tripartite consensus instead of remaining inactive and continuing as in the past.

94. In terms of the needs of sustainable enterprises, we would like to recall the importance of paying more attention to these needs in standards' supervision. We are of the opinion that the Committee of Experts neglects this central question. Sustainable enterprises comply with national laws and regulations and contribute to economic growth, employment creation and socio-economic progress. The UN 2030 Agenda has recognized the central role of enterprises in solving societal challenges through responsible business conduct, innovation and collaboration. The ILO Centenary Declaration states that international labour standards also need to respond to the changing patterns of the world of work, protect workers, take into account the needs of sustainable enterprises and be subject to authoritative supervision. Giving due attention to the needs of sustainable enterprises would improve the balance of the Committee of Experts' observations and thus relevance and acceptance of their recommendations.

95. Lastly, on the topic of social justice, with regard to the section in the Committee of Experts' Report on the "Application of International Labour Standards and the quest for social justice in the context of protracted and interlocking crises", in particular, the Committee of Experts' explicit support for the launch of a Global Coalition for Social Justice and the urgent need of a new social contract, we have concerns. These are not matters related to the supervision of labour standards. The Committee of Experts has no mandate, in our view, to be a political advocate. Our concern is deepened by the fact that these proposals are still all under discussion and require adoption by the tripartite constituents in the competent ILO bodies. We believe that the Committee of Experts should have recognized this and hope that it will exercise more restraint on similar issues in future.

are not here to correct that report. The EU Members also drew attention to this just now in the context of the discussion on the General Survey. We are not here to correct the report of the Committee of Experts but to hold a calm dialogue on the relationship between our two Committees. Saying that direct requests prevent this examination is a very risky statement, in our view.

139. It has also been suggested once again that governments should undertake an evaluation exercise before ratification. We would like to reassure everyone that to our knowledge no government proceeds with ratification lightly. It is often the fruit of a long process which includes a dialogue with the constituents, in consultation with the Office. But the more problematic aspect of this statement is thinking that once conformity with a ratified Convention has been achieved, it stays that way for ever. However, it often happens that a government is in conformity and then the situation takes a turn for the worse. This, by the way, is the whole raison d'être of the supervisory bodies: if ratification guaranteed conformity, we would not be here today and the supervisory task would be irrelevant.

140. The Committee of Experts has also been accused of welcoming the idea of launching a coalition on social justice on the grounds that this point is supposedly still under discussion at the ILO. For us, this calls into question the autonomy of the Committee of Experts, whose members are neither secretaries for the tripartite constituents nor their spokespersons. They have the freedom to express their views on behalf of their Committee regarding a proposal which forms part of the mandate of the Organization, even if the exact procedures involved are not yet known.

141. The position of the Employer members regarding the right to strike has also been recalled. We have made several points in this regard but wish to reiterate our refusal to see our Committee become the forum for a discussion which should be held elsewhere. Nor can I see the role that the Committee of Experts might play in the solution to this divergence of views, given that the ILO Constitution provides for specific means to achieve that, as we have stated on several occasions.

142. I will not dwell on the Employer members' unilateral interpretation of Article 4 of Convention, No. 98, as we have already addressed this point in the past and our views are known and remain unchanged. I will merely underline the fact that persisting with this stance is incompatible with respect for the autonomy of the Committee of Experts.

143. The Worker members consider that discussions are needed to enable progress towards effective implementation of international labour standards and suggest vigorously that the proposals they have made to improve the impact of the supervisory system are analysed and made the subject of an in-depth discussion. Modernization is not about endlessly reviving outmoded discussions; rather, it is about considering ways of creating an outlook for the future.

144. **Employer members:** At the outset, I would like to thank the Government and the Worker members for their rich and interesting contributions to the General Discussion and to the discussion on the General Survey. We also greatly appreciate the reply of the representative of the Secretary-General and we await with interest the statement from Professor Ago in relation to the Committee of Experts. Indeed, the presence of Professor Ago on behalf of the Chairperson of the Committee of Experts and the ongoing dialogue between the Committee of Experts and the Conference Committee is important, not only for the ILO constituents to better understand standards-related requirements, but also to facilitate the Committee of Experts' understanding of the realities and needs of the users of the supervisory system.

145. It is thus of utmost importance in our view to build as much convergence as possible between the Conference Committee and the Committee of Experts in order to provide effective and practical guidance to tripartite constituents in ILO Member States. We wish to respond to some of the remarks that were made by various contributors earlier in the General Discussion.

146. First, we consider the work of the Committee of Experts as vital to the successful functioning of the Conference Committee and the regular standards supervision as a whole. In this regard, it is equally vital that the Conference Committee provides its views on the interpretation and application of international labour standards in an independent manner, while taking into account the reality of the world of work. We agree with the Worker members that standards supervision must preserve balance. However, this means that the Committee of Experts should consider both the perspectives of the Worker members and the promotion of an enabling environment for sustainable enterprises, as set out in the ILO Centenary Declaration. Contrary to the Worker members' views, the consideration of one does not mean undermining the other. We believe the Committee of Experts should in fact promote both of these views equally.

147. Second, once again and regrettably, we have to come back on the view that the Conference Committee had no mandate to discuss the right to strike. The Committee has a comprehensive competence to examine the compliance by countries with ratified Conventions. As long as the Committee of Experts continues to provide detailed interpretation of the right to strike, in the context of Convention No. 87, the Conference Committee must be able to at least respond. We do not consider that the proposals discussed by the Governing Body at its March 2023 session to refer the dispute to the International Court of Justice or an in-house tribunal are in fact the most effective means of reconciling these different views. For a start, these proposals do not take into account that the origin of the dispute is in fact the interpretation by the Committee of Experts. In other words, without that, we would not have this dispute. We simply request the Committee of Experts and the Office, as a key part of the standards supervisory bodies, to facilitate a solution rather than simply continue down the current path. We strongly believe that the question of whether there should be international rules on the right to strike and if so, what they should look like, can only be meaningfully addressed through social dialogue and the available and competent ILO bodies. For example, an ILO tripartite technical meeting, or a dedicated discussion at the Conference on the law and practice in Member States on the right to strike, or a mediation process, or even the possibility of standard-setting, could all be considered to try and settle the existing interpretation issue. We regret that such tripartite events have never taken place before and we strongly believe that the time has come to look at this as an option. Such an approach could ensure that all ILO constituents actively engage in the process, that solutions are based on consensus and that outcomes adopted are universally relevant and accepted.

148. That said, let me be clear that we do not mean to instruct the Committee of Experts on how to provide non-binding assessments, but we do consider that it is important for that Committee not to create new obligations beyond what has been intended and agreed by the tripartite constituents at the Conference. In other words, it is not acceptable that the flexibility for implementation deliberately granted in Conventions to Member States is then later restricted by unilateral interpretations by the Committee of Experts.

149. Let me turn now to the General Survey. We made comprehensive submissions to the General Survey and we heard many other views as well. We agreed with the Committee of Experts on many points but also respectfully expressed our disagreement on some of its views and findings. In doing so, we have sought to contribute to a broader and more factual debate and we thank others who have done so. We considered the instruments selected for the General Survey to be particularly timely and pertinent for us in present times, notably due to the fact

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Case No. 1304 (Costa Rica), Representation made by the Confederation of Costa Rican Workers (CTC), the Authentic Confederation of Democratic Workers (CATD), the Unity Confederation of Workers (CUT), the Costa Rican Confederation of Democratic Workers (CCTD) and the National Confederation of Workers (CNT) alleging the failure by Costa Rica to implement several international labour conventions including Conventions Nos 11, 87, 98 and 135, Official Bulletin, vol. LXVIII, 1985, paras 95–102

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239th REPORT

240th REPORT

Nevertheless, in view of the concern expressed by the complainants at the use made by these associations of the possibility provided for in the law for any group of workers to conclude direct settlements regulating conditions of work independently of trade union organisations, the Committee considers that, in the event of the Bill becoming law, the provisions governing solidarity associations should respect the activities of trade unions guaranteed by Convention No. 98.

95. As regards the alleged measures taken by the Minister of the Presidency to establish a basis for the creation of blacklists of workers, the Committee notes that the complainants have sent an official circular addressed to Ministers and Executive Chairmen of autonomous institutions in August 1983, which reads as follows:

> On the precise instructions of the President of the Republic, and in the face of strike threats in the public sector, I should be obliged if you would observe the following instructions:
>
> Each Minister or Executive Chairman must forthwith organise an Emergency Group, which must make the necessary arrangements for essential services of the institution to continue in the event of a strike. This will require:
>
> - The sending out of a circular to all staff, urging them to remain at their posts and warning them that the relevant legal provisions will be strictly applied to those who abandon their work without justification. Without prejudice to any other penalties to which they may be liable under the law, their wages will be automatically reduced in proportion to the length of their absence.
>
> - As of this date the preparation by the Emergency Group of a plan for the maintenance of the essential services of the institution. For this purpose all holidays or leave of absence for personnel must be cancelled.
>
> - The moment the strike begins, the Legal Department of the Ministry or autonomous institution concerned must request the intervention of the Labour Courts to have the strike declared illegal.
>
> - At the same time a list must be drawn up of the instigators of the strike movement or those responsible for it. A list must also be made of persons who remain at work and persons who wish to remain at work but have been subjected to pressure in order to stay away.
>
> - Once the Courts have declared the strike illegal, the Department of Personnel shall proceed to the dismissal of the striking employees, without any responsibility being incurred by the employer, in accordance with the provisions of the Labour Code.

- The Legal Department must at the same time request the Ministry of Justice to take steps with the Public Ministry for the institution of legal proceedings against the instigators of the illegal strike movement and those responsible for it.

- You are requested to inform the President's Office of any abnormal movement or situation connected with the matters referred to in this Official Circular.

96. With regard to this official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

97. As regards the alleged application of penal sanctions for trade union activities, the Committee observes that the complainants have supplied specific information on only one case. This is a judgement of 27 March 1984 sentencing ten leaders of the Trade Union of the National Bank to six months' and one day's imprisonment (deferred for three years) and a fine of 1,200 colones each, in particular for abandonment of duty and incitement to collective abandonment of public duty.

98. From the reasons adduced for this judgement it may be inferred: (1) that the strike was declared as a consequence of the refusal of the budgetary authorities to approve the budgetary implications of a wage adjustment agreement to reflect the rise in the cost of living, concluded between the Union and the Bank; (2) that the strike lasted three days (from 26 to 28 September 1983) and was followed by 90 per cent of the workers; (3) that the legislation does not authorise strikes in state public service bodies such as the National Bank of Costa Rica and that this was the reason for the imposition of the penalties mentioned in the previous paragraph.

99. In this respect the Committee wishes to recall that the right to strike may be prohibited or largely restricted with respect to public servants acting in their capacity as agents of the public authorities (among whom those performing bank services can obviously not be counted) or with respect to workers in essential services in the strict sense of the term (those whose interruption would endanger the life, personal safety or health of the whole or part of the population). [See, for example, 233rd Report, Case No. 1225 (Brazil), para. 668.] The Committee has considered that the banking sector is not an essential service in the sense mentioned [See 233rd Report, Case No. 1225 (Brazil), para. 668] and that nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organising or participating in a peaceful strike. [See 230th Report, Case No. 1184 (Chile), para. 282.] In addition, the Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. [See,

for example 234th Report, Case No. 1173 (Canada/British Columbia), para. 87.] The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

100. In this connection, the Committee observed that the September 1983 strike at the National Bank of Costa Rica, although prohibited, took place as a result of the Government's failure to respect its commitment to approve the budgetary implications of a wage adjustment agreement concluded between the Bank and the Union. This, in turn, led to the sentencing of ten members of the executive committee of the Union for having organised the strike. The Committee considers that both the prohibition of the strike and the application of penal sanctions were incompatible with the principles of freedom of association.

101. In general, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts posing problems of conformity with Conventions Nos. 87 and 98.

The Committee's recommendations

102. In these circumstances, the Committee recommends the Governing Body to approve this interim report, and in particular the following conclusions:

(a) In general the Committee recalls that all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions and that a State cannot use the argument that other commitments or agreements can justify the non-application of ratified Conventions.

(b) The Committee draws the attention of the Government to the fact that, even under a stabilisation policy, the right to regulate conditions of employment, including wages, by means of collective agreements, may be restricted with respect to wage negotiations only under certain conditions; in particular, such restrictions should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards.

(c) The Committee observes that the legislation serving as the basis for restrictions on wage negotiation dates from August 1982 (Decree No. 13827-TSS). In this connection, it requests the Government to indicate the measures it envisages with a view to removing the restrictions imposed by the legislation thereby enabling a return to free collective bargaining on wages.

(d) The Committee considers it imperative that the legislation contain specific provisions explicitly and clearly recognising the right of organisations of public employees and officials not acting in the capacity of agents of the state administration to negotiate collectively, a right which, in accordance with the principles, can only be denied to officials working in ministries and other comparable government bodies but not, for example, to persons working in public undertakings or autonomous public institutions.

(e) As regards the Bill to consolidate the solidarity associations, which according to the complainants are a movement supported by the employers and parallel to the trade union movement, the Committee observes that the Bill governs a series of associations pursuing social objectives that are not specifically of a trade union nature. Nevertheless, bearing in mind the concern expressed by the complainants, the Committee considers that, in the event of the Bill becoming law, the provisions governing the solidarity associations should respect the activities of trade unions guaranteed by Convention No. 98.

(f) With regard to the official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

(g) As regards the strike of workers of the National Bank of Costa Rica the Committee would recall that the right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of the public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the banking sector is not a service that is essential in the strict sense of the term. In addition, it has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. The Committee considers that both the prohibition of the strike and the application of penal sanctions to the ten members of the executive committee of the Union were incompatible with the principles of freedom of association.

(h) The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

(i) The Committee wishes to point out that the technical assistance of the International Labour Office might contribute effectively to the drafting of a proposed text for the reform of the Labour Code in which the rights enshrined in the freedom of association

and collective bargaining Conventions are fully safeguarded. The Committee wishes to draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts which raise problems of conformity with Conventions Nos. 87 and 98.

Geneva, 30 May 1985.

Roberto Ago,
Chairman.

Document No. 273

Case No. 1364 (France), Representation against the Government of France made by the General Federation of Labour; Complaint against the Government of France presented by the Trade Unions International of Textile, Clothing, Leather and Fur Workers, Official Bulletin, vol. LXX, 1987, paras 138–142

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248th REPORT

136. In previous cases, the Committee has considered that the extension of an agreement to an entire sector of activity contrary to the views of the organisation representing most of the workers in a category covered by the extended agreement is liable to limit the right of free collective bargaining of that majority organisation and that this system makes it possible to extend agreements containing provisions which result in a worsening of conditions of work of the category of workers concerned. [See, inter alia, 217th Report, Case No. 1087 (Portugal), para. 223.]

137. However, in the case under consideration the Committee observes that the legislation does contain certain protective clauses, since extension presupposes that the National Collective Bargaining Committee has been consulted and that a representative workers' organisation has signed the text. Under these circumstances, and since the legislation sets objective criteria for determining the representativeness of trade union organisations, the Committee considers that this aspect of the representation does not call for further examination.

V. Repression of the right to strike

138. The allegations referred to the infringement of the right to strike principally by means of excessive recourse to legal proceedings by nationalised and private enterprises, the expulsion of strikers and the use of subcontracting or temporary workers to replace strikers.

139. The Government, noting that Conventions Nos. 87 and 98 contain no allusion to the right to strike, points out that the right is recognised in the Preamble of the French Constitution, which stipulates that it must be exercised within the framework of the laws that govern it. The Council of State has added to this that the right to strike, like any other right, must be limited in order to avoid abuse or its being exercised in defiance of public order. Moreover, in a November 1982 ruling on a case cited by the CGT, the Court of Appeal has stated that trade unions should be deemed liable for events in which they have actually participated if the events constitute a penal offence or cannot be ascribed to the normal exercise of the right to strike.

140. As it has emphasised on numerous occasions, the Committee considers the right to strike to be a legitimate means of defending the workers' interests. [See 244th Report, Case No. 1270 (Brazil), para. 225.] The Committee must therefore consider whether the alleged facts constitute an undue restriction of the exercise of the right to strike.

141. The Committee notes that, where strikers or trade unions have been convicted by the courts in connection with strikes referred to by the complainant organisation, it has been for illegal acts such

as assault, illegal confinement, criminal offences, impairment of movement of persons and goods, etc. Similarly, the expulsion of strikers occupying a place of work has taken place only under certain guarantees and where their presence is an obstacle to the work of non-strikers. Since it deems strike action to be legitimate only when exercised peacefully and without intimidation or physical constraint, the Committee considers that this aspect of the representation does not call for further examination.

142. As to the replacement of strikers by temporary workers, the Committee notes that under the Act of 25 July 1985 employees of temporary work agencies may not be called in. The Committee also observes that, by an Ordinance of 11 August 1986, the fixed term work contract cannot have as its objective the replacement of a wage earner whose employment contract has been suspended following a collective labour dispute. It therefore considers that this aspect of the case does not call for further examination.

The Committee's recommendations

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

(a) Regarding the suppression of facilities previously granted to trade union organisations in the form of trade union premises and means of action, although the alleged facts do not constitute a violation of the Convention the Committee calls upon the competent authorities, in order to avoid detrimental consequences for trade union organisations, to endeavour, whenever it is not possible to allow such organisations to continue using their premises, to offer alternative solutions so that they can continue operating normally.

(b) Regarding the infringement of the rights of workers' representatives, the Committee, while noting that the judicial or administrative authorities have remedied such situations as have been brought to their notice, calls upon the Government to pay due attention to the provisions of the Workers' Representatives Recommendation, 1971 (No. 143), that relate to the means of ensuring effective protection of workers' representatives.

Geneva, 26 February 1987.

Roberto Ago,
Chairman.

Document No. 274

Cases Nos. 1810 and 1830 (Turkey), Representation made by the Confederation of Turkish Trade Unions (TURK-IS) alleging non-observance by Turkey of Convention No. 87; Complaint against the Government of Turkey presented by the Confederation of Progressive Trade Unions of Turkey (DISK), Official Bulletin, vol. LXXIX, 1996, paras 61–63

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of the workers in the undertaking (section 12). In view of the numerous and serious specific allegations presented by DISK, which relate to a large number of sectors of economic activity in which workers are not covered by a collective agreement due to the disputes over the question of trade union representativity, the Committee strongly urges the Government to amend its legislation so as to bring it in line with the requirements of Conventions Nos. 87 (Article 2) and 98 (Article 4).

58. Maintenance of the ban on belonging to more than one trade union (section 22 of the Act on trade unions). *The Committee notes that the Government merely indicates that this prohibition aims at avoiding proliferation of rival trade unions. The Committee nevertheless considers that, if workers are employed in several occupational activities, they should be able to join the trade union of their choice covering these diverse activities.*

59. Maintenance of the limit on the amount of trade union dues (section 23). *The Committee notes that the Government merely points out that this measure aims to protect the workers. The Committee considers that it should be up to the constitutions of the trade unions to make a decision in this matter.*

60. Maintenance of the requirement of ten years of effective service in the branch applicable to candidates for trade union elections (section 14). *The Committee regrets that the Government has not provided information on the measures it plans to take in this respect. The Committee draws attention to the importance it attaches to the principles under which workers' and employers' organizations have the right to freely elect their representatives. Noting the specific allegations submitted by DISK in this respect, the Committee expresses the firm hope that this provision, which is extremely prejudicial to the interests of the trade unions, will be raised in the near future.*

61. Banning of political strikes, sympathy strikes and strikes which are prejudicial to society or destroy national wealth, excessive limitation on strike pickets together with extremely heavy penalties of imprisonment for the trade unions (article 53 of the Constitution and sections 25 and 47, 70, 72, 73 and 79 of the Act on collective agreements, strikes and lockouts). *The Committee concludes that the excessive restrictions on the right to strike imposed on workers constitute a serious violation of the principles of freedom of association. It considers that these limitations would be justifiable only if the strike were to lose its peaceful character. In any case, the general banning of sympathy strikes is abusive, and workers should be able to carry out such actions provided the initial strike that they are supporting is legal. Only the banning of political strikes may be considered acceptable since purely political strikes do not fall within the scope of the principles of freedom of association. [See* **Digest of decisions and principles of the Freedom of Association Committee**, *4th edition, 1996, para. 481.]*

62. Maintenance of the ban on strikes beyond essential services in the strict sense of the term (sections 29 and 30 of Act No. 2822), compulsory arbitration and 60 days' waiting clauses accompanied by penalties of imprisonment for offenders (article 54 of the Constitution, sections 23, 37 and 75 of Act No. 2822). *The Committee considers that these restrictions on the exercise of the right to strike are much too broad. It insists, in particular, that compulsory arbitration may be imposed only for essential services in the strict sense of the term, i.e. those whose interruption would be likely to endanger the life, personal safety or health of the whole or part of the population. In addition, the general ban on strikes in banks and transport is not in conformity with the principles of*

freedom of association, and should therefore be lifted. Furthermore, it should be possible to impose sanctions for strike action solely in cases in which the action is not in conformity with the principles of freedom of association, and such sanctions should not be disproportionate with the severity of the offence involved; and this is not the case when the strikers expose themselves to penalties of up to two years or even three years in prison.

***63.** Severe restrictions on freedom of association resulting from the Act of 1985 on export processing zones. The Committee regrets that the Government has merely confirmed the information submitted by the complainants about this allegation. It calls attention to the importance it attaches to the respect of freedom of association throughout Turkish territory and urges the Government to remove in the near future these restrictions which are incompatible with the application of Conventions Nos. 87 and 98.*

***64.** The Committee also notes with concern that the Government limits itself to confirming that the TÜMHABER-SEN trade union was dissolved by court order on the grounds that the amendment to the national legislation following ratification of Conventions Nos. 87 and 151 had not so far been carried out and that no law yet existed to grant this association legal personality. The Committee draws attention to the fact that by ratifying Conventions Nos. 87 and 151 in July 1993, the Government undertook to ensure that the acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of the Conventions on freedom of association and protection of the right to organize, and this applies also to public service trade unions. The Committee strongly urges the Government to take the necessary measures to grant the TÜMHABER-SEN trade union, as well as the other unions of civil servants, legal personality.*

***65.** Moreover, the Committee profoundly regrets that the Government restricts itself to pointing out that the anti-union reprisal measures are a matter for the courts. It draws attention to the fact that, in cases of dismissal of trade unionists on the grounds of their membership of or their activities in a trade union, governments have repeatedly been requested to take the necessary measures to allow trade union officers and members who have been dismissed on grounds of their legitimate trade union activities to be reinstated in their jobs and to apply the pertinent legal sanctions to the undertakings in question. In this respect, the Committee notes with interest that the Labour Act will be amended to allow reinstatement. It calls on the Government to keep it informed of developments in the situation in this respect. Furthermore, in the opinion of the Committee, governments should take the necessary measures to allow their labour inspectors to enter freely and without advance warning the establishments under their supervision, and to carry out the verification or inspections they deem necessary to ensure that the legal provisions — in the matter of anti-union discrimination in particular — are strictly observed [see* **Digest**, *op. cit., paras. 753 and 756]. The Committee strongly urges the Government to take the necessary measures to guarantee workers effective protection against acts of anti-union discrimination in conformity with the international undertakings it made in ratifying Convention No. 98 in June 1970.*

***66.** Finally, in general, the Committee considers that Turkish trade union legislation is too detailed and that it covers numerous questions which should be in the competence of the constitutions of workers' and employers' organizations themselves. The*

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Case No. 1971 (Denmark), Representation against the Government of Denmark presented by the Association of Salaried Employees in the Air Transport Sector (ASEATS) and the Association of Cabin Crew at Maersk Air (ACCMA) alleging non-observance by Denmark of Conventions Nos 87 and 98, Official Bulletin, vol. LXXXII, 1999, paras 52–61

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316th Report

Report, para. 29]. The fact that, in this particular case, the outcome of the voting was in line with the position of the complainants does not change the fact that the present legislation can give rise to restrictions on the right of majority organizations to enter into free collective bargaining in a manner contrary to Article 4 of Convention No. 98.

51. *Furthermore, the Committee considers that the analogy made to industrial collective agreements is irrelevant. The particularities of the Danish system raised by the Government, such as the existence of several different collective agreements in a given enterprise, make sense only in so far as they recognize the right of these many and diverse representative sectoral unions to undertake meaningful negotiations. The argument of job-interdependency and the risks of extortion should not be such as to deny the rights of legitimate representative unions to participate in free collective bargaining.*

52. *Finally, the Committee notes that section 12 may also have a negative impact on the possibility of a workers' organization to exercise the right to strike in so far as it may be bound by a labour market decision to accept an overall draft settlement to which a collective agreement concerning their sector has been linked. The Committee requests the Government to review the legislation, in consultation with the social partners, so as to ensure that the view of the majority of workers in a given sector is not subordinated to the view of the majority of the entire labour market as concerns the possibility of continuing free collective bargaining of terms and conditions of employment and as concerns the possibility of undertaking industrial action.*

53. *As concerns the legitimacy of the statutory intervention extending for two years the collective agreements under review in the spring of 1998, including those pertaining to the complainants, the Committee takes due note of the considerations evoked by the Government to the effect that: the extension for two years corresponds to the usual term for Danish collective agreements; the transport sector, which includes the complainants in this case, is under all circumstances essential to the functioning of society and; the legislative extension also granted concessions to the workers in several essential respects.*

54. *The Committee must nevertheless first observe that the principal effect of this intervention has been to render impossible collective bargaining in the private sector for the period of the two years by which the collective agreements have been extended. In this regard, the Committee recalls the importance it attaches to the principle that the public authorities should refrain from any interference which would restrict or impede the lawful exercise by trade unions of their right, which the Committee regards as an essential element in freedom of association, to seek to improve the living and working conditions of those whom they represent through collective bargaining or other lawful means; and that any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and formulate their programmes [see 243rd Report, para. 245 (Case No. 1338 (Denmark))].*

55. *The Committee also notes that a further effect of the Act to Renew Certain Collective Agreements has been both to terminate the industrial action which had already begun and to prohibit any further industrial action which might occur in the relevant sectors for the period by which the operation of the collective agreements were statutorily extended. In this respect, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of whole or part of the population) [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, para. 526]. While noting the Government's position that the transport sector, which includes the complainants in this case, is under*

all circumstances essential to the functioning of society, the Committee must recall that it does not consider transport generally to constitute an essential service in the strict sense of the term [see **Digest**, *para. 545].*

56. *Moreover, as concerns the Government's argument that problems began to emerge towards the end of the dispute which could not continue to be solved by granting exemptions or other emergency measures, the Committee recalls that, although it is recognized that a stoppage in services or undertakings such as transport companies might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services could cause a state of acute national emergency. It has therefore considered that measures taken to mobilize workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests [see* **Digest**, *para. 530].*

57. *Further, as concerns the nature of the services to be provided by the complainant, the Committee notes that the Government only refers in this case to a general risk feared in respect of the vital transportation of medicine. In this respect, the Committee would recall that a minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, the workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities [see* **Digest**, *para. 558]. The Committee notes with regret that no attempts appear to have been made by the Government to negotiate a minimum service for the period of the industrial action in question in such a way as to have enabled the parties to the dispute to resolve their differences through free collective bargaining rather than resorting to a statutorily imposed settlement which has bound the parties for two years.*

58. *Finally, the Committee notes from the list of organizations covered by the conciliator's proposed compromise that the action taken by the Government had an impact on a large number of employees (over 400,000) covered by over 500 collective agreements without any effort being made to distinguish between those sectors which might have been argued to be genuinely essential (or likely to cause an acute national crisis) and those which cannot be considered as such.*

59. *In the light of the preceding paragraphs, the Committee is of the view that the 1998 Act renewing certain collective agreements involved statutory intervention in the collective bargaining process contrary to the principles of free collective bargaining and the right of workers' and employers' organizations to organize their activities and to formulate their programmes. The Committee therefore urges the Government to ensure that such intervention is not repeated in the future.*

60. *The Committee draws the legal aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee requests the Government to review section 12 of the Conciliation Act as indicated in its conclusions, in consultation with the social partners, so as to ensure that the view of the majority of workers

in a given sector is not subordinated to the view of the majority of the entire labour market as concerns the possibility of continuing free collective bargaining of terms and conditions of employment and as concerns the possibility of undertaking industrial action.

(b) Considering that the 1998 Act renewing certain collective agreements involved statutory intervention in the collective bargaining process contrary to the principles of free collective bargaining and the right of workers' and employers' organizations to organize their activities and to formulate their programmes, the Committee urges the Government to ensure that such intervention is not repeated in the future.

(c) The Committee draws the legal aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Geneva, 4 June 1999.

(Signed) Max Rood,
Chairperson.

Document No. 276

Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the complaints concerning the observance by Greece of Conventions Nos 87 and 98 made by a number of delegates to the 52nd Session of the International Labour Conference, Official Bulletin, vol. LIV, 1971, paras 260–261

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persons who have not worked during the previous six years from being elected to a post at any level of a trade union organisation. It hinders the effective functioning of trade unions since the activities and responsibilities of officers, at least from a certain level, are such at present that these persons can no longer in practice carry out a job in an enterprise. Finally, there is a risk that an employer by dismissing an employee might thereby disqualify him from holding trade union office.

254. For all these reasons, the Commission considers that this provision imposes requirements which run counter to Article 3 of Convention No. 87, which establishes that workers' organisations shall have the right to elect their representatives in full freedom.

Remuneration of Trade Union Officers, Staff and Legal Advisers.

255. Section 10 of this decree limits the remuneration which trade unions may pay to the members of their executive committees, and to their staff and legal advisers.

256. No evidence was produced before the Commission to indicate that there had been a general abuse in the payment of salaries to such persons in the Greek trade union movement which might have justified the introduction of a provision in these terms. The Commission also accepted the argument put forward that section 10 would have the effect of preventing trade union organisations from freely engaging staff and legal advisers, or from maintaining the services of executive officers, who might command higher remuneration than that permitted by the legislation. This would again be detrimental to the efficient running of the trade union organisations concerned.

257. The Commission considers that a provision of this nature constitutes an infringement of Article 3 of Convention No. 87, which guarantees to workers' and employers' organisations the right to organise their activities and provides that " the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof ".

Dismissal of Trade Union Officers and Dissolution of Trade Unions.

258. Section 6 of the same Legislative Decree provides that trade union leaders and representatives shall be dismissed from office by court decision if they become involved in activities aimed against the integrity of the State, or its security or its political or social regime. It also lays down that trade a union shall be dissolved by order of the court if its purpose or activity is directed against the integrity of the State or its security, or its political or social order, or the civil liberties of the citizen.

259. The language of this provision is very wide and much would depend on the way in which it is interpreted and applied. So far no action has been taken under it and the Commission considers that it would be premature to declare that any breach of Convention No. 87 has been committed.

The Right to Strike.

260. The provisions laid down in section 3 of Legislative Decree No. 185 limit the duration of a strike to three days unless a majority vote of a general assembly of the union has been obtained, authorising strike action for a longer period. Any decision to strike must be notified to the employers' association which is competent to negotiate a collective agreement and also to the Ministry of Labour. Further,

during any strike the trade union executive body shall ensure that the necessary personnel is available for the supervision of the installations of the workplace. Strikes are temporarily prohibited during mediation, according to section 4 of Legislative Decree No. 185.

261. The Commission observes that Convention No. 87 contains no specific guarantee of the right to strike. On the other hand, the Commission accepts that an absolute prohibition of strikes would constitute a serious limitation of the right of organisations to further and defend the interest of their members (Article 10 of the Convention) and could be contrary to Article 8, paragraph 2, of the Convention, under which " the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention ", including the right of unions to organise their activities in full freedom (Article 3). The Commission did not receive any evidence that the provisions of Legislative Decree No. 185 were such as to make strikes impossible in practice or limit them to the extent of seriously restricting the rights guaranteed by the Convention. Moreover the Decree in question has not been in force sufficiently long to enable the practical effects thereof to be fully determined. The Commission believes that the absence of strikes is attributable to the political climate which prevails in Greece rather than to the legislation. In these circumstances, therefore, the Commission is not prepared to conclude that the legislation amounts to a violation of the Convention.

Legislative Decree No. 186/1969.

Collective Bargaining.

262. Legislative Decree No. 186/1969 lays down precise qualifications which must be fulfilled before any trade union organisation can be recognised as representative and therefore capable in law of entering into negotiations for the conclusion of a collective agreement. The fulfilment of these qualifications depends mainly upon a specified number of members having voted at the most recent elections of the organisation concerned. In addition, the legislation removes the right of the Greek General Confederation of Labour to conclude collective agreements fixing the national minimum wage and empowers the Government to fix the minimum wage in the future.

263. The Commission notes that Article 4 of Convention No. 89 provides that " measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements ".

264. As regards the requirements for the acquisition of representative capacity, however, the Commission recalls that the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations have considered that, if more than one trade union organisation exists within a particular category of workers it would not be incompatible with the freedom of association Conventions to grant to the most representative union, determined according to objective criteria, preferential or exclusive rights to conclude collective agreements. The granting of such rights of representation for collective bargaining cannot be considered in any way to constitute a discriminatory practice. The Commission accepts this view.

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Report of the Commission instituted under article 26 of the Constitution to examine the complaint on the observance by Poland of Conventions Nos 87 and 98 presented by delegates at the 68th Session of the International Labour Conference, Official Bulletin, vol. LXVII, 1984, paras 517, 552–557

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Report of the Commission instituted under article 26 of the Constitution of the International Labour Organisation to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), presented by delegates at the 68th Session of the International Labour Conference

State, whereas, as the Commission has already observed, shortly before the proclamation of martial law, the Congress of the organisation had adopted a programme that was essentially of a trade union nature. It will further be observed that the immense majority of the trade unionists interned were not subjected to any subsequent judicial investigation. These various elements may justify the belief that one of the aims of the Government, in depriving the majority of the leaders of Solidarity of their freedom, was to suppress or prevent the activities and development of the trade union movement embodied by this organisation and that it therefore acted in violation of Article 3 of Convention No. 87.

516. As the Commission has already stated, the grounds for the sentences pronounced by the courts were the organisation of strikes and participation in the strikes or the distribution of publications of the dissolved organisation Solidarity. The question that arises in these cases is thus to determine whether such activities can be considered to be of a trade union nature.

517. Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view – which is shared by the Commission – that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. An absolute prohibition of strikes thus constitutes, in the view of the Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for [by the Convention]".

518. As to the printing and the distribution of publications, the Commission must point out that the right to the free expression of thought is of special importance as an integral part of the freedom to which trade union organisations are entitled. As the Committee on Freedom of Association has often stressed,[27] the right to express opinions through the press or otherwise is one of the essential elements of trade union rights. The prohibition of trade union publications and the conviction of trade unionists for infringing this prohibition cannot therefore be anything but a violation of the right of trade unions to organise their activities, as recognised in Article 3 of Convention No. 87.

519. With regard to the nature of the legal proceedings instituted, the Commission is bound to observe that it has little information on the way in which the trials of the trade unionists were conducted. Although certain evidence given during the hearings alleged the failure to respect certain fundamental rights in the judicial field such as the right of defence, the Commission cannot, in view of the small number of concrete cases brought to its attention, conclude that, generally speaking, the guarantees of normal judicial procedure were systematically disregarded.

520. Another question concerning the detentions which the Commission must examine is that of the conditions imposed on the detainees and, in particular, the most serious allegation of all, the ill-treatment said to have been inflicted on them. The information from the Government available to the Commission on this point was extremely limited. However, from the many statements made during the hearings and the substantial documentation submitted to it on this point, the Commission is led to believe that the standard minimum rules for the treatment of

[27] See ILO: *Freedom of Association – Digest of decisions of the Freedom of Association Committee of the Governing Body of the ILO* (Geneva, 2nd edition, 1976), para. 399.

refers to the recognition of the guiding role of the PUWP in society as a whole and not in trade union activity as such. Taking all these factors into account, the Commission considers that section 3 of the Act cannot be taken to impair the guarantees laid down in the Convention, provided that, as the wording seems to indicate, this provision is interpreted as concerning the general constitutional and political order of the country and not trade union activity itself. The attention of the Government is therefore called to the importance which the practical application of this provision will have for the purpose of assessing its conformity with Convention No. 87.

Right of trade unions to organise their activities – right to strike

552. The Act, in section 36 (1), recognises the right of trade unions to organise strikes, but fixes a number of conditions for the exercise of this right and prohibits it in certain sectors of activity.

553. The Commission must examine these provisions to determine whether they impose restrictions which call in question the right to strike and, consequently, the right of trade unions to organise their activities (Article 3 of Convention No. 87) for furthering and defending the interests of their members (Article 10 of the same Convention). It has observed that some of these provisions could constitute serious restrictions.

554. It is necessary to refer, first, to the conditions for the calling of a strike laid down by section 38 (1) which requires that the decision shall be approved by the majority of the workers concerned and not merely by the majority of those voting. The Commission considers that a majority of this kind may be difficult to reach, particularly in large undertakings, and jeopardise the possibility of the workers concerned to call a strike. Section 38 (1) also requires the prior agreement of the higher body of the trade union, that is to say, apparently, the federation to which the organisation is affiliated. The Commission considers that such a requirement, laid down by legislation, imposes an undue restriction on the right of trade unions to organise their activities.

555. Second, the Commission observes that section 40 of the Act establishes a very long list of essential services in which strikes are prohibited. It feels bound to refer in this regard to the views expressed by ILO supervisory bodies that the prohibition of strikes should be confined to essential services in the strict sense, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population.

556. The Commission must also point out the severity of the penalties laid down for the organisers of strikes, going as far as imprisonment for one year for infringement of the provisions on the right to strike (section 47 of the Act).

557. The Commission considers that the provisions concerning procedures of negotiation, conciliation and arbitration that must be exhausted before a strike can be called do not require special comment, since the final arbitration award is not of a binding nature, either party being entitled to declare, before the start of the procedure, that the award will not bind it (section 35 (5) of the Act).

Right to establish federations and confederations

558. As the Commission has already pointed out,[39] trade unions have the right, under section 20 of the Act, to establish inter-union associations and organisations.

[39] See above, para. 547.

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Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by Nicaragua of Conventions Nos 87, 98 and 144, Official Bulletin, vol. LXXIV, 1991, paras 500–509

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Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by Nicaragua of 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 Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

provision was to protect members' rights in the event of any irregularity. It was therefore a question of harmonising this objective with the provisions of Article 3 of Convention No. 87, which stipulate that the public authorities shall refrain from any interference which would restrict the right of trade unions to organise their administration and activities or impede the lawful exercise thereof. To this end, the representative of the Director-General proposed an alternative formula which was considered acceptable by the authorities and the trade union officials.

498. The Commission has not been informed of any complaints concerning this matter. Despite the time which has elapsed, the above-mentioned provision was not amended and ceased to have effect only during the short period when the Regulation respecting Trade Union Associations was repealed, from the end of the Sandinista Government to the beginning of the present Government, which reintroduced it.

499. Thus the Commission can only conclude that, except for the above-mentioned period following the adoption of Act No. 97, legislation in this respect has not been and is not compatible with Article 3 of Convention No. 87.

Activities and programmes

500. This section will examine two other matters concerning Article 3 of Convention No. 87 which have also been pending for some time before the Committee of Experts, namely, the prohibition of political activities by trade unions under section 204(b) of the Labour Code and the right to strike, which is subject to restrictions under sections 225, 228 and 314 of the Labour Code.

501. The Committee of Experts and the Committee on Freedom of Association have had to refer on many occasions to pieces of legislation which establish a broad prohibition of political activities by trade unions. They have considered that provisions prohibiting all political activities are incompatible with the principle of freedom of association[5] and furthermore, cannot be realistically applied in practice. Even during the preparatory work leading to the adoption of Convention No. 87 it was pointed out, in defining a workers' organisation as one "for furthering and defending the interests of workers", that these terms do not restrict the right of trade unions to participate in political activities or limit trade union action to simply occupational matters.[6]

502. The Commission believes that a broadly based prohibition of political activities by employers' and workers' organisations would be contrary to Article 3 of the Convention since it would impair the right of such organisations to organise their activities and develop their programmes of action. But at the same time such organisations

should maintain their independence of political parties and in the development of their political activities.

503. The information available does not show that trade unions were dissolved as a result of their participation in political activities, as authorised by section 204(b) of the Labour Code. As regards other measures adopted by the Government, see paragraphs 433-469. The authorities had stated to the representative of the Director-General in 1983 that the provision of section 204 could be suppressed since it was not applied in practice. This was not carried out until the adoption of Act No. 97 respecting the reform of the Labour Code but when this Act itself was reformed by Act No. 102 the previous situation was re-established.

504. Thus, with the exception of this period, legislation respecting the political activities of trade unions has continued and continues to be incompatible with the provisions of Article 3 of Convention No. 87.

505. As regards strikes, it appears from all the information gathered that there have been very few major strike movements and that trade unions have had recourse to short work stoppages. In particular, the organisations opposing the Sandinista Government pointed out that in any situation of this kind trade unionists and workers of such organisations were subject to reprisals by the authorities. For their part the trade union officials of organisations close to the Government said that even though recourse had been made to strikes in their sector no reprisals were taken. However, there was a general consensus, which included the previous and present authorities of the Ministry of Labour and COSEP, on the non-application of the regulations concerning strikes and the established procedure for settling collective disputes. This procedure was considered so complicated that it was impossible to apply. From this standpoint, it appears that strikes and work stoppages would in general lie outside the field of legality even though they are not declared illegal.

506. The Committee of Experts had noted the provision requiring a majority of 60 per cent of the workers for the calling of a strike (section 225 of the Labour Code); the prohibition of strikes in rural occupations when produce may be damaged if it is not immediately disposed of (section 228(1)); the provision enabling the authorities to impose compulsory arbitration to end a strike that has lasted 30 days (section 314). These are restrictions on the right to strike which go beyond what is accepted by the ILO supervisory bodies and which infringe the right of trade unions to organise their activities (Article 3 of the Convention) for the purposes of promoting and defending the interests of their members (Article 10). Indeed, the above-mentioned section 225 of the Labour Code does not establish a simple majority but a qualified majority of the workers for declaring a strike, which makes action more difficult in this respect; section 228(1) includes in the definition of work in the public interest (in which strikes are prohibited by section 227) tasks which are not

essential services in the strict sense as defined by the supervisory bodies (and where a prohibition or restriction of strikes would be acceptable); section 314 makes it possible to impose compulsory arbitration, equivalent in this case to the prohibition of the strike once it has lasted more than 30 days.

507. Act No. 97 introduced a simpler method for the settlement of disputes of a social and economic nature (section 25, under the chapter respecting collective agreements), which implicitly abrogated part of the previous procedure by providing that such disputes would be settled in accordance with this new machinery (section 28). As a result, section 314, which was included in the previous repealed procedure, also ceased to have effect. However, under Act No. 97, sections 225 and 228(1) mentioned above, included in the chapter respecting strikes, remained in effect.

508. However, under Act No. 102 the amendments to Act No. 97 concerning procedure were eliminated, and the previous legal situation was re-established. This remains the case at the present.

509. It can therefore be concluded that except for the brief period of the application of Act No. 97 as regards section 314 of the Labour Code, the provisions restricting the right to strike which are incompatible with Convention No. 87 have remained and continue to remain in force.

Collective bargaining

510. Both in the complaint made under article 26 of the Constitution and in the pending observations of the Committee of Experts, reference is made to Decree No. 530 of 1980 as an infringement of Article 4 of Convention No. 98. This Decree amended section 22 of the Labour Code and introduced a requirement that collective agreements must be approved by the Ministry of Labour.

511. The complainants also pointed out that the National Labour and Wages Organisation System (SNOTS) which established categories of employment and corresponding rates of remuneration, eliminated wages from the collective bargaining process, contrary to Convention No. 98. In this connection, the Committee of Experts had taken note with interest in 1989 that, according to the information provided by the study mission in 1988, the SNOTS was used only for reference purposes and that wages could be fixed freely.

512. As regards the practice of collective bargaining, the Commission can only note the contradiction between the different items of information received. Thus, for example, COSEP officials stated that there had been no negotiations in the private sector whereas, according to the Minister of Labour, collective bargaining had occurred in both the public and private sectors. The previous labour authorities referred to the large number of collective agreements concluded after the first period following the adoption of Decree

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Trade Union Rights in Belarus, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of the Republic of Belarus of Conventions Nos 87 and 98, Official Bulletin, vol. LXXXVII, 2004, paras 622–627

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Trade union rights in Belarus

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cases involving Mr. Yaroshuk and Mr. Odynets, the imposition of administrative detention was out of line with the penalties ordinarily imposed in such cases.

619. The "offence" which resulted in Mr. Bukhvostov being sentenced to ten days' administrative detention consisted solely of his unauthorized presence in Oktyabrskaya Square between 4.05 p.m. and 4.10 p.m. on 30 October 2003 while carrying a poster bearing the words "We protest against violations of workers' rights" and his failure to respond to police orders to desist. The presence of a single person at that time and place could not possibly pose any threat to public health or safety nor, even, to the free flow of traffic. Indeed, the Commission can find nothing in the court decision to suggest otherwise.

620. So far as concerns Mr. Yaroshuk, officials from the Ministry of Justice and even the Deputy Prosecutor-General expressed surprise that he was punished by other than a fine. Moreover, the Commission notes that the argument that he presented to the effect that he criticized the law enforcement system generally and not the judge who presided over the proceeding for the deregistration of the BTUATC appears not to have been the subject of any detailed analysis. So far as concerns Mr. Odynets, it has already been noted that, normally, only a fine is imposed for the failure of a lawyer to attend court.

621. Whilst the cases against Mr. Bukhvostov, Mr. Yaroshuk and Mr. Odynets are now part of the past, the Commission considers that they reflect the Government's failure to protect the rights of trade unionists and, in particular, to protect them from discrimination on the basis of their trade union membership or activities. Such discrimination is not only incompatible with, but is also destructive of freedom of association.

D. Legislation affecting trade unions

622. Having addressed Decree No. 2 in the first section of its conclusions, the Commission will here address the matters raised in respect of Decree No. 24 concerning the use of foreign gratuitous aid (which replaced Decree No. 8) and the Law on Mass Activities (which substantially incorporated Decree No. 11).

623. Decree No. 24 retains the previous restrictions placed on the use of foreign gratuitous aid by organizations, including workers' and employers' organizations, that were the subject of previous examination by the ILO supervisory bodies in respect of Decree No. 8. The Commission observes that the Decree still prohibits the use of foreign gratuitous aid for, among others, carrying out public meetings, rallies, street processions, demonstrations, pickets, strikes and the running of seminars and other forms of mass campaigning among the population. Violation of this provision can result in the imposition of heavy fines, as well as the possible termination of an organization's activities. While the Government stated that Decree No. 24 was only aimed at rendering the previous situation transparent and created a simple and rapid procedure for the registration of foreign aid, the Commission heard from one of the employers' organizations that, to the contrary, the process was costly and time-consuming.

624. The Commission recalls from the principles elaborated by the ILO supervisory bodies that the right recognized in Articles 5 and 6 of Convention No. 87 implies the right to benefit from the relations that may be established with an international workers' or employers' organization. Legislation which prohibits the acceptance by a national trade union or employers' organization of financial assistance from an international workers' or employers' organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with this right. Although there were no specific allegations as to the practical

application of this Decree, the Commission reiterates the conclusions made by these supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid set forth in Decree No. 24 is incompatible with the right of workers' and employers' organizations to organize their own activities and to benefit from assistance that might be provided by international workers' and employers' organizations.

625. As regards the Law on Mass Activities, the Commission recalls that this Law sets out the procedure for requesting previous authorization for any mass activity, gathering, open-air meeting, street rally, demonstration or picket. A certain number of restrictions are laid down in the Law, including the prohibition of mass events aimed at changing the constitutional order by force or propaganda of war, social, national, religious or race hostility. Further restrictions are set out concerning the proximity of mass events in respect of certain government buildings and metro stations. When a request for a mass event has been received, the local executive and administrative body has the power, with the event organizer's agreement, to change the date, place and time of the event to safeguard the rights and freedoms of citizens, public safety and the normal functioning of transport and organizations. Organizations in violation may be dissolved and organizers may be charged with a violation of the Administrative Code.

626. The Government explained that the Law establishes a procedure for mass events that is necessary for the protection of the rights of the wider community and to ensure law and order. While the legislation does permit dissolution, no trade unions have been liquidated under the Law. The Commission recalls, however, the case of Mr. Bukhvostov referred to above, who was sentenced to ten days' administrative detention for having undertaken a picket on his own, which is also punishable under the Law, in an unauthorized venue. While the Government explained that such action in the absence of appropriate permission is a breach of the Administrative Code, Mr. Bukhvostov clarified for the Commission that requests for permission to demonstrate in central public squares were systematically denied and that the authorities routinely and unilaterally changed the venue to an obscure and unfrequented location. This was what had happened in October when he had made a request to protest against violations of workers' and trade union rights in Belarus. Following his decision to protest on his own in the square for which permission had been denied, he was immediately arrested, charged and convicted. The decision was not subject to appeal.

627. Given this information, the Commission endorses the comments of the ILO's supervisory bodies that several provisions of the Law on Mass Activities constitute a violation of the right of workers' organizations to organize their activities freely, without interference by the public authorities, as provided for in Article 3 of Convention No. 87. As concerns the action taken in respect of Mr. Bukhvostov pursuant to the Law, read in combination with the Administrative Code, the Commission considers that there was a serious breach of Mr. Bukhvostov's civil liberties. In this respect, the Commission recalls the ILC 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasizes that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal.

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Truth, reconciliation and justice in Zimbabwe, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of Zimbabwe of Conventions Nos 87 and 98, Official Bulletin, vol. XCIII, 2010, paras 572–575

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Truth, reconciliation and justice in Zimbabwe

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569. The Commission takes due note of the Government's declared intention to reform the law in relation to the basic labour rights of public servants by harmonizing the Labour Act and the Public Service Act. The Commission is pleased to note the Government's stated commitment to ensuring that the right to organize is extended to public servants in the near future. It considers it significant that steps have already been taken in this regard, taking advantage of technical assistance offered by the ILO during July 2009.

570. Despite this, however, the Commission was unable to obtain firm information as to the status of legislative amendments to harmonize the labour law. In addition, the Commission is concerned to note that all workers' and employers' organizations that it met believed that their opinion had not been sufficiently taken into account. The Commission notes that, as at 18 December 2009, it has received no information relating to legislative amendments to the Public Service and Labour Acts, and so it can only assume that the harmonization process is somewhat delayed.

571. The Commission reiterates that all workers, without distinction whatsoever and without previous authorization, should enjoy the right to establish and join trade unions of their own choosing for furthering and defending their occupational and economic interests. Convention No. 87 guarantees the right to organize to employees in the public service, including prison officers. The Commission considers that the current legislation in Zimbabwe is not in full conformity with Article 2 of Convention No. 87 in so far as public servants are denied their right to organize.

The right to strike

572. The right to strike is recognized by the Zimbabwean Labour Act. The Commission notes however that many representatives of workers' and employers' organizations and labour lawyers recognized that the right to strike could not, in practice, be exercised. It was explained to the Commission that it was very difficult for a strike to be declared lawful under the Labour Act. The procedure was described as cumbersome and extraordinarily slow. Further, the Commission was made aware of the excessively wide definition of "essential services" in Zimbabwean legislation, which meant that a significant number of workers had no right to strike.

573. The Commission notes that as strikes are usually, if not always, found to be unlawful in Zimbabwe, striking workers are routinely subject to the sanctions set out in the Labour Act for illegal strikes – and these sanctions include fines, dismissal and penal sentences for individuals, and fines and deregistration for trade unions. The Commission was told that large numbers of workers have been dismissed from their employment on account of taking industrial action, and that this has had a significant effect on their lives, and that of their families, in the context of the economic and social crisis in Zimbabwe. It notes with concern that often members of workers' committees and trade union officials and members were singled out for dismissal in the aftermath of a strike.

574. The Commission must highlight its particular concern at the information it received concerning the routine use of the police and army against strikes. In particular, the Commission was presented with information concerning the shooting of striking workers in 2001, leading to injuries and deaths. The Commission is deeply disturbed by the information that it received that security forces opened fire on striking workers in the mining sector in September 2009, less than a month after it left the country.

575. In light of the above, the Commission is obliged to observe that the right to strike is not fully guaranteed in law or practice. In particular, the Commission is concerned that the legislation includes disproportionate sanctions for the exercise of the right to strike and an excessively large definition of essential services; and that in practice the procedure for the declaration of strikes is problematic and that it appears that the security forces often intervene in strikes in Zimbabwe. The Commission wishes to confirm that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87.

Interference

576. The Commission was told of serious interference in ZCTU meetings and demonstrations, most particularly through the requirement in practice that trade unions seek the permission of the police to hold such gatherings. The Commission was concerned at the complaint that members of the secret services were present at all ZCTU meetings, either overtly or covertly. In this regard, it was not surprised to be told that members of the ZCTU often did not wish to actively participate in meetings on account of the presence of CIO operatives.

577. A number of ZCTU officials and members stated that when their homes or trade union premises had been searched, trade union materials had been confiscated, without court orders. These materials included posters, flyers, T-shirts and caps.

578. It was also indicated to the Commission that the legislation allowed interference by the authorities in the financial affairs of trade unions (Labour Act, section 120(2)), and that this power had been used in relation to a financial investigation of the ZCTU in 2006. The Commission understands that the investigation involved the seizure of ZCTU financial and administrative documentation and affected its ability to function normally during that time. The Commission also noted concerns with legislative provisions concerning the supervision of the elections of trade union officers (Labour Act, section 51); the regulation of trade union dues (Labour Act, sections 28(2), 54(2) and (3) and 55) and the disposal of union dues by limitations on the staff that trade unions may employ and the equipment and property that they may purchase (Labour Act, section 55).

579. The Commission took particular note of the allegation that the Reserve Bank of Zimbabwe had established a parallel bank account into which funds sent by foreign donors to the ZCTU were transferred. The Commission was told by the ZCTU that it was not able to freely access that money, and that a significant amount of money had been held in this way for one year, until it was released the day after the Commission's first meeting with the ZCTU during its on-the-spot mission in August 2009.

580. The Commission was deeply concerned at statements that potential "witnesses" to the Commission had been identified by the CIO before its on-the-spot mission, and had been threatened that they should not participate in the Commission's work. The Commission was made aware that, when it was drawn to her attention, the Minister of Labour and Social Services sent a letter to the Minister of State for National Security seeking his urgent intervention to prevent the repetition of such actions.

581. The Commission wishes to stress that public authorities should refrain from any interference which would restrict the right of workers' organizations to organize their activities and to formulate their programmes, or which would impede the lawful exercise of this right. The freedom to organize their administration is not limited to strictly financial operations, but also implies that trade unions should be able to dispose of all their fixed and movable assets unhindered and that they should enjoy inviolability of their premises,

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Towards Freedom and Dignity in Myanmar, Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of Conventions Nos 87 and 29, 4 August 2023, paras 585–586

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Towards Freedom and Dignity in Myanmar

Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29)

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safety of trade unionists, but also on their ability to engage in trade union activities, thus making these matters of direct union interest. Accordingly, while emphasizing that the main objective of trade unions is to defend and advance the economic and social interests of their members, the Commission concludes that making public statements in support of the opposition, calling for the transition to a democratic society and criticizing measures taken by the military authorities, as well as expressing support for workers and their labour rights, fall within the scope of legitimate trade union activities protected by Convention No. 87, especially within the current context in Myanmar where, as a result of the measures taken by the military authorities since the February 2021 military coup, trade unions across the country and at all levels are unable to function.

584. The Commission has further observed a number of obstacles to trade union activities in the private sector, as well as a lack of access to rapid and independent remedies in this regard. In particular, numerous witnesses have reported difficulties in collecting union dues, indicating that unions are often accused of collecting funds for the Peoples' Defence Forces (PDFs). The Commission has also observed a common practice of establishing yellow unions so as to show that factories support trade unions and to prevent the emergence of genuine worker representation. Workers are then obliged to join and pay union dues. Further issues noted by the Commission concern the preference of management to deal with workplace coordination committees instead of existing trade unions, as well as the formation of such committees without consulting the workers, or even appointing worker representatives, all of which result in a lack of genuine worker representation in workplace coordination committees and undermine the role of trade unions. The Commission finds it important to clarify that, while such employer interference in the internal affairs of trade unions is a matter covered by Convention No. 98, which has not been ratified by Myanmar and is outside the Commission's mandate, actions and omissions by the military authorities play a decisive role in this regard, for which reason the Commission is raising these issues under Convention No. 87. In particular, it considers that the measures taken by the military authorities since the coup have not only condoned, in the public eye, such behaviour by employers, but have also enabled restrictions on the right of trade unions to freely organize their administration, activities and programmes, thus weakening their already fragile situation in the country. Even though the military authorities claimed that workplace coordinating conciliation bodies were functioning, the Commission found that there was, in practice, a lack of access to effective remedies which could address and solve such workplace issues, and particularly independent and impartial courts, labour inspection and other dispute settlement mechanisms. This further highlights the practical obstacles to trade union activities.

585. Furthermore, the Commission has observed limitations on the right to strike. In the first place, the military authorities have prohibited public assemblies of more than five people, thus imposing restrictions on demonstrations and workers' strikes in public areas. In private workplaces, including in the garment sector, workers have been discouraged from taking collective action to raise labour rights violations, as managers have kept lists of strike participants and threatened to call in the police or the military. In other instances, workers who have complained to the labour authorities about workplace violations have been threatened with being arrested if they organize protests. In several cases reported to the Commission, the military or the police have intervened to break up workplace strikes that posed no threat to the public order, and strike organizers and participants were beaten or arrested. In one recent incident brought to the Commission's attention, trade unionists and labour activists who

organized a strike in a garment factory were arrested and charged with incitement under section 505(a) of the Penal Code (a newly introduced provision on crimes against defence services or government employees), despite not having made any political demands and only attempting to negotiate higher wages. The Commission has also noted that much of the interference by the military authorities in strikes, labour disputes and trade union activities has occurred in industrial zones covered by martial law, where there is a complete lack of guarantees of due process. Such interference has also been enabled and facilitated by the declaration of a state of emergency and the introduction of new crimes allowing the arrest of workers without arrest warrants, as elaborated above. On the basis of the information provided, the Commission concludes that the threats and repercussions of engaging in workplace strikes and protests have, in practice, discouraged workers from taking collective action.

586. In this respect, the Commission is bound to point out that any intervention by the security forces in situations of strikes by workers should be strictly limited to ensuring public order. The use of the security forces for other purposes, and in particular to disperse a peaceful workplace strike, constitutes interference in trade union affairs. Furthermore, it must be emphasized that in no case should penal sanctions be imposed simply for having organized or participated in a peaceful strike. Based on the evidence received, the Commission concludes that the right to strike, as an essential means for workers to defend their interests, has been severely limited since the coup, both as a result of military orders restricting assemblies of more than five persons in public spaces and because of the significant risks and repercussions faced by strike participants, contrary to Article 3 of Convention No. 87.

587. Finally, the Commission considers that, in addition to the above issues, the right of workers' organizations to freely organize their administration, activities and programmes is further inhibited by the climate of violence and intimidation of trade union leaders and members, resulting from their persistent stigmatization and prosecution. It is evident that trade unions whose members and leaders are in hiding or in detention, who are threatened, intimidated, monitored and have access to only limited channels of communication, as well as those workers' organizations with offices that have been raided and sealed off, cannot freely engage in trade union activities in defence of their members' interests.

Article 4 – Dissolution and suspension of organizations

588. The Commission has already addressed above the requests made by the military authorities to unions to return their registration certificates ("form 7") in relation to Article 2 of the Convention (see above, paragraphs 573-577). However, this practice also raises issues under Article 4 of the Convention, as the cancellation of registration, in the present circumstances, implies serious consequences with an effect tantamount to administrative dissolution or suspension.

589. Furthermore, the Commission notes that the military authorities have declared 16 trade unions and civil society organizations as not being registered legally in accordance with the Labour Organization Law (LOL) (see above, paragraph 434). While the military authorities have claimed in communications to the ILO supervisory mechanisms and in the national media, that this does not amount to having declared these organization "illegal", several of their own public pronouncements do refer to them in such terms. Irrespective of whether or not these organizations have been declared illegal, the announcement declaring them not registered in accordance with the LOL, especially in view of the actions taken or threatened against them in this connection, have in practice

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Freedom of association

International Labour Office
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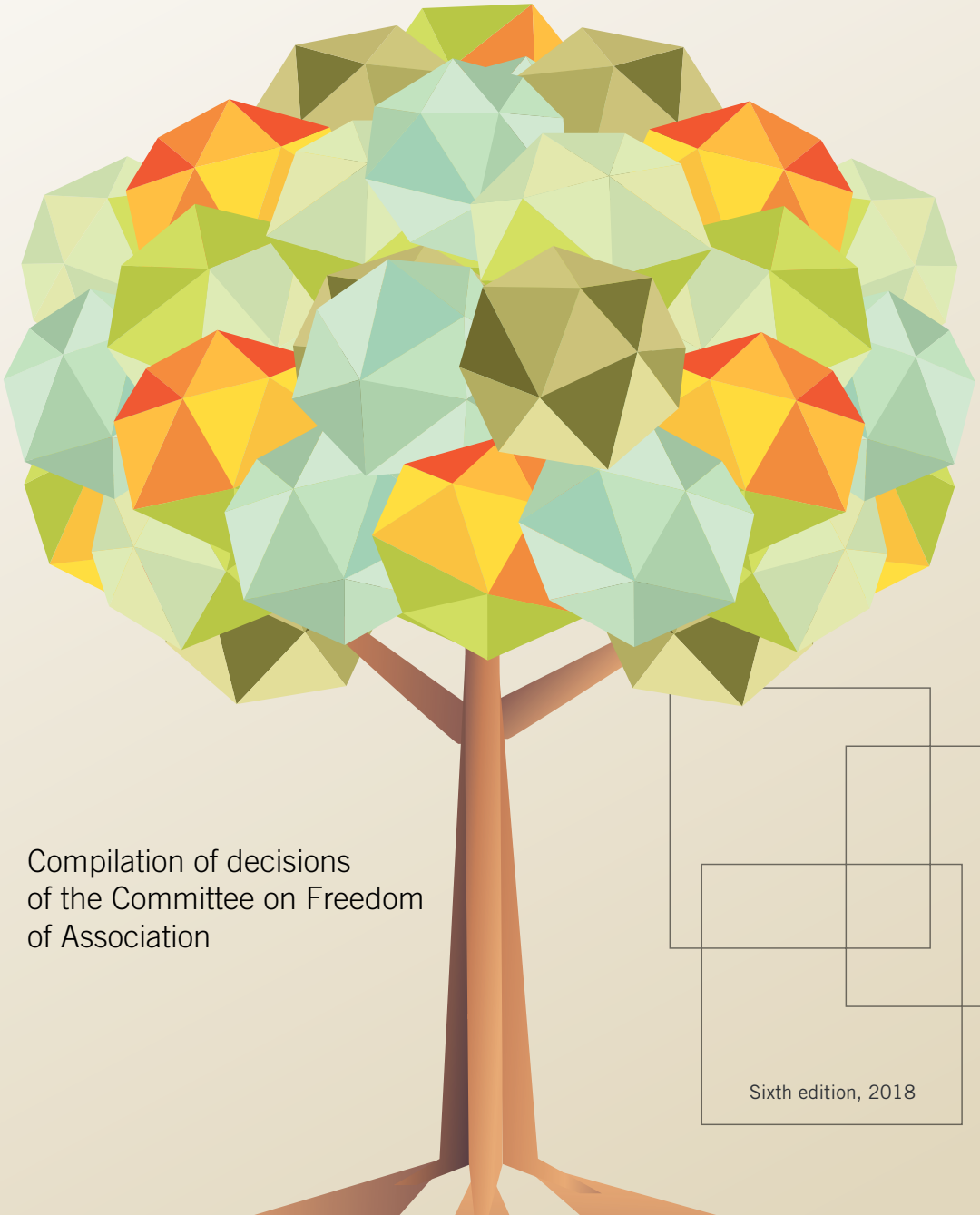

Compilation of decisions of the Committee on Freedom of Association

Sixth edition, 2018

Right to strike

10

Importance of the right to strike and its legitimate exercise

751. While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organizations, it has regarded it as such only in so far as it is utilized as a means of defending their economic interests.

(See the 2006 Digest, para. 520.)

752. The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.

(See the 2006 Digest, para. 521; 346th Report, Case No. 2528, para. 1446; 349th Report, Case No. 2552, para. 419; 351st Report, Case No. 2566, para. 980; 353rd Report, Case No. 2589, para. 126; 355th Report, Case No. 2602, para. 662; 356th Report, Case No. 2696, para. 306; 358th Report, Case No. 2737, para. 636; 360th Report, Case No. 2803, para. 340; 362nd Report, Case No. 2741, para. 767, Case No. 2841, para. 1036; 363rd Report, Case No. 2704, para. 399, Case No. 2602, para. 465; 365th Report, Case No. 2829, para. 577; 367th Report, Case No. 2938, para. 227; 370th Report, Case No. 2994, para. 735; 374th Report, Case No. 3057, para. 213; and 376th Report, Case No. 2994, para. 1002.)

753. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

(See the 2006 Digest, para. 522; 342nd Report, Case No. 2323, para. 695, Case No. 2365, para. 1048; 344th Report, Case No. 2496, para. 407, Case No. 2471, para. 891; 346th Report, Case No. 1865, para. 780, Case No. 2473, para. 1532; 349th Report, Case No. 2548, para. 538; 350th Report, Case No. 2602, para. 681; 351st Report, Case No. 2581, para. 1329; 354th Report, Case No. 2581, para. 1103; 356th Report, Case No. 2696, para. 306; 357th Report, Case No. 2713, para. 1101; 360th Report, Case No. 2803, para. 340; 362nd Report, Case No. 2723, para. 842; 365th Report, Case No. 2723, para. 778; 372nd Report, Case No. 3022, para. 614; and 377th Report, Case No. 3107, para. 240.)

754. The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

(See the 2006 Digest, para. 523; 344th Report, Case No. 2471, para. 891; 346th Report, Case No. 2506, para. 1076, Case No. 2473, para. 1532; 349th Report, Case No. 2552, para. 419; 354th Report, Case No. 2581, para. 1114; and 362nd Report, Case No. 2838, para. 1077.)

755. Strikes are by nature disruptive and costly; strike action also calls for a significant sacrifice from those workers who choose to exercise it as a last resort tool and means of pressure on the employer to redress any perceived injustices.

(365th Report, Case No. 2829, para. 577.)

756. It does not appear that making the right to call a strike the sole preserve of trade union organizations is incompatible with the standards of Convention No. 87. Workers, and especially their leaders in undertakings, should however be protected against any discrimination which might be exercised because of a strike and they should be able to form trade unions without being exposed to anti-union discrimination.

(See the 2006 Digest, para. 524.)

757. The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.

(See the 2006 Digest, para. 525.)

Objective of the strike (strikes on economic and social issues, political strikes, solidarity strikes, etc.)

758. The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.

(See the 2006 Digest, para. 526; 344th Report, Case No. 2496, para. 407; 353rd Report, Case No. 2619, para. 573; 355th Report, Case No. 2602, para. 668; 357th Report, Case No. 2698, para. 224; 371st Report, Case No. 2963, para. 236, Case No. 2988, para. 852; and 378th Report, Case No. 3111, para. 712.)

759. Organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.

(See the 2006 Digest, para. 527; 340th Report, Case No. 2413, para. 901; 342nd Report, Case No. 2323, para. 685; 343rd Report, Case No. 2432, para. 1025; 344th Report, Case No. 2496, para. 413; 346th Report, Case No. 2506, para. 1076; 355th Report, Case No. 2602, para. 668; 362nd Report, Case No. 2838, para. 1077; 371st Report, Case No. 2988, para. 852; and 378th Report, Case No. 3111, para. 712.)

760. Strikes of a purely political nature and strikes decided systematically long before negotiations take place do not fall within the scope of the principles of freedom of association.

(See the 2006 Digest, para. 528; 340th Report, Case No. 2413, para. 901; 344th Report, Case No. 2509, para. 1245; and 353rd Report, Case No. 2619, para. 573.)

761. Strikes of a purely political nature do not fall within the protection of Conventions Nos. 87 and 98.

(See 346th Report, Case No. 1865, para. 749; and 353rd Report, Case No. 1865, para. 705.)

762. If a national civic work stoppage is exclusively political and insurrectional, the Committee would not have competence in the issue.

(See 334th Report, Case No. 2254, paragraph 1082).

763. While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies.

(See the 2006 Digest, para. 529; 344th Report, Case No. 2509, para. 1247; 348th Report, Case No. 2530, para. 1190; 351st Report, Case No. 2616, para. 1012; 353rd Report, Case No. 2619, para. 573; 355th Report, Case No. 2602, para. 668; 360th Report, Case No. 2747, para. 841; and 372nd Report, Case No. 3011, para. 646.)

764. There is a distinction between a strike and a lockout, but this case refers to a "peaceful demonstration" and a "suspension of services", which do not come within the scope of employer–worker relations, but rather that of a protest and suspension of activities by the employer. Under these circumstances, employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies, which can be restricted only in the case of essential services or public services of fundamental importance, in which a minimum service could be established.

(See 348th Report, Case No. 2530, para. 1190.)

765. In one case where a general strike against an ordinance concerning conciliation and arbitration was certainly one against the government's policy, the Committee considered that it seemed doubtful whether allegations relating to it could be dismissed at the outset on the ground that it was not in furtherance of a trade dispute, since the trade unions were in dispute with the government in its capacity as an important employer following the initiation of a measure dealing with industrial relations which, in the view of the trade unions, restricted the exercise of trade union rights.

(See the 2006 Digest, para. 530.)

766. The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

(See the 2006 Digest, para. 531; 344th Report, Case No. 2486, para. 1208, Case No. 2509, para. 1245; 346th Report, Case No. 2473, para. 1543; 355th Report, Case No. 2602, para. 668; 362nd Report, Case No. 2814, para. 443; 363rd Report, Case No. 1865, para. 118; 367th Report, Case No. 2814, para. 354; 372nd Report, Case No. 3011, para. 648; 374th Report, Case No. 3050, para. 468; and 376th Report, Case No. 3011, para. 151.)

767. The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.

(See the 2006 Digest, para. 532; 367th Report, Case No. 2907, para. 897; and 373rd Report, Case No. 3005, para. 192.)

768. If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified.

(See the 2006 Digest, para. 533; 344th Report, Case No. 2509, para. 1245; 364th Report, Case No. 2907, para. 673; and 367th Report, Case No. 2907, para. 898.)

769. A strike aimed at an increase in wages and payment of wage arrears clearly falls within the scope of legitimate trade union activities.

(See 342nd Report, Case No. 2323, para. 691.)

770. A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.

(See the 2006 Digest, para. 534; 346th Report, Case No. 2473, para. 1543; and 357th Report, Case No. 2698, para. 220.)

771. By excluding sympathy strikes, secondary boycotts and industrial action in support of multiple-enterprise agreements from the scope of protected industrial action, legal provisions could adversely affect the right of organizations to seek and negotiate multi-employer agreements, as well as unduly restrict the right to strike.

(See 357th Report, Case No. 2698, para. 220.)

772. The fact that a strike is called for recognition of a union is a legitimate interest which may be defended by workers and their organizations.

(See the 2006 Digest, para. 535; 346th Report, Case No. 2473, para. 1537; 350th Report, Case No. 2602, para. 681; 355th Report, Case No. 2602, para. 662; and 363rd Report, Case No. 1865, para. 118.)

773. A ban on strikes related to recognition disputes (for collective bargaining) is not in conformity with the principles of freedom of association.

(See the 2006 Digest, para. 536.)

774. A claim for recognition for collective bargaining purposes addressed to the subcontracting company does not render a strike illegal.

(See 350th Report, Case No. 2602, para. 681.)

775. Protest strikes in a situation where workers have for many months not been paid their salaries by the Government are legitimate trade union activities.

(See the 2006 Digest, para. 537; and 353rd Report, Case No. 2619, para. 573.)

776. A ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association.

(See the 2006 Digest, para. 538; 344th Report, Case No. 2496, para. 408; 346th Report, Case No. 2473, para. 1543; 350th Report, Case No. 2602, para. 681; 371st Report, Case No. 2988, para. 852; and 372nd Report, Case No. 3011, para. 648.)

777. Provisions which prohibit strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer are contrary to the principles of freedom of association on the right to strike; workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

(See the 2006 Digest, para. 539.)

778. Workers and their organizations should be able to call for industrial action (strikes) in support of multi-employer contracts (collective agreements).

(See the 2006 Digest, para. 540; and 357th Report, Case No. 2698, para. 220.)

779. The Committee has stated on many occasions that strikes at the national level are legitimate in so far as they have economic and social objectives and not purely political ones; the prohibition of strikes could only be acceptable in the case of civil servants acting on behalf of the public authorities or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 541.)

780. A declaration of the illegality of a national strike protesting against the social and labour consequences of the government's economic policy and the banning of the strike constitute a serious violation of freedom of association.

(See the 2006 Digest, para. 542.)

781. As regards a general strike, the Committee has considered that strike action is one of the means of action which should be available to workers' organizations. A 24-hour general strike seeking an increase in the minimum wage, respect of collective agreements in force and a change in economic policy (to decrease prices and unemployment) is legitimate and within the normal field of activity of trade union organizations.

(See the 2006 Digest, para. 543.)

782. A general protest strike demanding that an end be brought to the hundreds of murders of trade union leaders and unionists during the past few years is a legitimate trade union activity and its prohibition therefore constitutes a serious violation of freedom of association.

(See the 2006 Digest, para. 544.)

Types of strike action

783. Generally, a strike is a temporary work stoppage (or slowdown) wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances.

(See 358th Report, Case No. 2716, para. 862.)

784. Regarding various types of strike action denied to workers (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful.

(See the 2006 Digest, para. 545; 348th Report, Case No. 2519, para. 1143; and 362nd Report, Case No. 2815, para. 1370.)

785. The Committee has considered that the occupation of plantations by workers and by other persons, particularly when acts of violence are committed, is contrary to Article 8 of Convention No. 87. It therefore requested the Government, in future, to enforce the evacuation orders pronounced by the judicial authorities whenever criminal acts are committed on plantations or at places of work in connection with industrial disputes.

(See the 2006 Digest, para. 546.)

786. In a case where the justice system qualified the act of reporting to work with shaved heads or cropped hair styles as a strike action and a violation of the grooming standards of the hotel, the Committee, while taking into account the concerns expressed by the hotel management with regard to its image, considered that equating the mere expression of discontent, peacefully and lawfully exercised, with a strike per se resulted in a violation of the freedom of association and expression.

(See 358th Report, Case No. 2716, para. 862.)

Employer side during the strike

787. In the framework of a collective labour dispute, it is neither realistic nor necessary to always deal on the employer side with the entity bearing the ultimate financial or economic responsibility or with the highest employer representative, be it in the public sector (for example, the competent minister) or in the private sector (for example, the parent company).

(See 378th Report, Case No. 3111, para. 708.)

788. In view of the obligation of both the employer and the trade union to negotiate in good faith and make every effort to reach an agreement as well as the importance of the right to strike as one of the essential means for workers and their organizations to defend their economic and social interests, it should be ensured that the party to a collective labour dispute on the employer side has the authority to make concessions and take decisions concerning wages and terms and conditions of employment, so

that the pressure brought to bear during the various stages of a collective labour dispute is effectively directed to an appropriate entity.

(See 378th Report, Case No. 3111, para. 708.)

Prerequisites

789. The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations.

(See the 2006 Digest, para. 547; 343rd Report, Case No. 2432, para. 1026; 346th Report, Case No. 2488, para. 1331; 357th Report, Case No. 2698, para. 225; 359th Report, Case No. 2203, para. 524; 371st Report, Case No. 2988, para. 850; and 375th Report, Case No. 2871, para. 231.)

790. The legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike.

(See the 2006 Digest, para. 548; 359th Report, Case No. 2203, para. 524.)

791. Economic consideration should not be invoked as a justification for restrictions on the right to strike.

(See 362nd Report, Case No. 2841, para. 1041; 367th Report, Case No. 2894, para. 339.)

792. According to the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers. Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

(See 298th Report, Case No. 1612, para. 22.)

793. Legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike.

(See the 2006 Digest, para. 549; 359th Report, Case No. 2725, para. 261, Case No. 2776, para. 288; and 371st Report, Case No. 2988, para. 853.)

794. In general, a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of the principles of freedom of association.

(See the 2006 Digest, para. 550; 359th Report, Case No. 2725, para. 261, Case No. 2776, para. 288; and 371st Report, Case No. 2987, para. 167.)

795. Conciliation and mediation machinery should have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.

(See 375th Report, Case No. 2794, para. 387.)

796. In cases of mandatory conciliation, it is desirable to entrust the decision of opening the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute.

(See 336th Report, Case No. 2369, para. 212; 338th Report, Case No. 2377, para. 403; 342nd Report, Case No. 2420, para. 221; and 344th Report, Case No. 2458, para. 302.)

797. In cases of mandatory conciliation, it is necessary to entrust the decision of opening the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute.

(See 349th Report, Case No. 2535, para. 351; and 368th Report, Case No. 2942, para. 188.)

798. The Committee has emphasized that, although a strike may be temporarily restricted by law until all procedures available for negotiation, conciliation and arbitration have been exhausted, such a restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.

(See the 2006 Digest, para. 551; 340th Report, Case No. 2439, para. 363; and 364th Report, Case No. 2827, para. 1123.)

799. The obligation to give prior notice to the employer before calling a strike may be considered acceptable, as long as the notice is reasonable.

(See the 2006 Digest, para. 552; 340th Report, Case No. 2415, para. 1257; 344th Report, Case No. 2509, para. 1246; 346th Report, Case No. 2473, para. 1542; and 376th Report, Case No. 2994, para. 1002.)

800. Prior notice of 48 hours is reasonable.

(See 344th Report, Case No. 2509, para. 1246.)

801. The requirement that a 20-day period of notice be given in services of social or public interest does not undermine the principles of freedom of association.

(See the 2006 Digest, para. 553.)

802. The legal requirement of a cooling-off period of 40 days before a strike is declared in an essential service, in so far as it is designed to provide the parties with a period of reflection, is not contrary to the principles of freedom of association. This clause which defers action may enable both parties to come once again to the bargaining table and possibly to reach an agreement without having recourse to a strike.

(See the 2006 Digest, para. 554.)

803. The information asked for in a strike notice should be reasonable, or interpreted in a reasonable manner, and any resulting injunctions should not be used in such a manner as to render legitimate trade union activity nearly impossible.

(See 346th Report, Case No. 2473, para. 1542.)

804. The right of the Ministry of Civil Service Affairs and Housing to determine the time and the place of the strike could further excessively hinder the exercise of the right to strike.

(See 371st Report, Case No. 2988, para. 850.)

805. With regard to the majority vote required by one law for the calling of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalled the conclusions of the Committee of Experts on the Application of Conventions and Recommendations that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of such a nature as to restrict the rights of these organizations, contrary to Article 3 of the Convention.

(See the 2006 Digest, para. 555.)

806. The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.

(See the 2006 Digest, para. para. 556; 357th Report, Case No. 2698, para. 225; and 371st Report, Case No. 2988, para. 850.)

807. The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a large number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike.

(See the 2006 Digest, para. 557.)

808. The Committee requested a government to take measures to amend the legal requirement that a decision to call a strike be adopted by more than half of the workers to which it applies, in particular in enterprises with a large union membership.

(See the 2006 Digest, para. 558.)

809. The obligation to observe a certain quorum and to take strike decisions by secret ballot may be considered acceptable.

(See the 2006 Digest, para. 559.)

810. The observance of a quorum of two-thirds of the members may be difficult to reach, in particular where trade unions have large numbers of members covering a large area.

(See the 2006 Digest, para. 560.)

811. The Committee considered that the condition requiring the agreement of the majority of member organizations for calling a strike in federations and confederations and a vote in favour of the strike by the absolute majority of the workers of the undertaking in the other cases may constitute a serious limitation on the potential activities of trade unions.

(See 214th Report, Case No. 1081, para. 266.)

812. The Committee has considered to be in conformity with the principles of freedom of association a situation where the decision to call a strike in the local branches of a trade union organization may be taken by the general assembly of the local branches, when the reason for the strike is of a local nature and where, in the higher-level trade union organizations, the decision to call a strike may be taken by the executive committee of these organizations by an absolute majority of all the members of the committee.

(See the 2006 Digest, para. 562.)

813. In a case in which the national legislation provided that a majority trade union organization and an absolute majority of the workforce in an enterprise may call a strike and end a strike that is under way, as well as request the appointment of an arbitration tribunal, the Committee considered that in the specific circumstances the majority vote in favour of putting an end to strike action and regulating the appointment of an arbitration tribunal was not contrary to the principles of freedom of association.

(See 380th Report, Case No. 3097, para. 324).

814. The obligation to hold a second strike vote if a strike has not taken place within three months of the first vote does not constitute an infringement of freedom of association.

(See the 2006 Digest, para. 563.)

Limitation of the duration of a strike

815. The Committee has expressed its concern at the imposition of a limit on the duration of a strike which, due to its nature as a last resort for the defence of workers' interests, cannot be predetermined.

(See 376th Report, Case No. 2994, para. 1002.)

Recourse to compulsory arbitration

816. Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose

interruption would endanger the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 564; 344th Report, Case No. 2484, para. 1093; 346th Report, Case No. 1865, para. 757, Case No. 2488, para. 1331; 349th Report, Case No. 2545, para. 1149; 353rd Report, Case No. 1865, para. 713; 367th Report, Case No. 2894, para. 340; 370th Report, Case No. 2983, para. 284; 371st Report, Case No. 2988, para. 853; 372nd Report, Case No. 3038, para. 468; 374th Report, Case No. 3084, para. 871; 377th Report, Case No. 3107, para. 241; and 378th Report, Case No. 3147, para. 570.)

817. Compulsory arbitration is acceptable in cases of acute national crisis.

(See 374th Report, Case No. 3084, para. 871).

818. In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.

(See the 2006 Digest, para. 565; and 371st Report, Case No. 2988, para. 853.)

819. It is difficult to reconcile arbitration imposed by the authorities at their own initiative with the right to strike and the principle of the voluntary nature of negotiation.

(See 344th Report, Case No. 2484, para. 1093; 349th Report, Case No. 2545, para. 1149; and 378th Report, Case No. 3147, para. 570.)

820. A provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining.

(See the 2006 Digest, para. 566.)

821. The right to strike would be affected if a legal provision were to permit employers to submit in every case for compulsory arbitral decision disputes resulting from the failure to reach agreement during collective bargaining, thereby preventing recourse to strike action.

(See the 2006 Digest, para. 567.)

822. The Committee considers that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.

(See the 2006 Digest, para. para. 568; 346th Report, Case No. 1865, para. 757; 353rd Report, Case No. 1865, para. 713; 367th Report, Case No. 2894, para. 340; 370th Report, Case No. 2983, para. 284; and 377th Report, Case No. 3107, para. 241.)

823. In order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria.

(See the 2006 Digest, paras. 569 and 995.)

Cases in which strikes may be restricted or even prohibited, and compensatory guarantees

A. Acute national emergency

824. A general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time.

(See the 2006 Digest, para. 570; 343rd Report, Case No. 2426, para. 284; and 371st Report, Case No. 3001, para. 211.)

825. Responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of all parties concerned.

(See the 2006 Digest, para. 571; 346th Report, Case No. 1865, para. 757, Case No. 2506, para. 1079; 353rd Report, Case No. 1865, para. 713; and 362nd Report, Case No. 2838, para. 1078.)

B. Public service

826. Recognition of the principle of freedom of association in the case of public servants does not necessarily imply the right to strike.

(See the 2006 Digest, para. 572.)

827. The Committee has acknowledged that the right to strike can be restricted or even prohibited in the public service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees.

(See the 2006 Digest, para. 573; and 374th Report, Cases Nos. 2941 and 3026, para. 662.)

828. The right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State.

(See the 2006 Digest, para. 574; 344th Report, Case No. 2365, para. 1446; and 372nd Report, Case No. 3025, para. 152.)

829. Too broad a definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers. The prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State.

(See the 2006 Digest, para. 575; 344th Report, Case No. 2365, para. 1446; and 378th Report, Case No. 3111, para. 715.)

830. The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential

services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

(See the 2006 Digest, para. 576; 340th Report, Case No. 1865, para. 751; 344th Report, Case No. 2467, para. 578; 346th Report, Case No. 2500, para. 324; 348th Report, Case No. 2433, para. 48, Case No. 2519, para. 1141; 349th Report, Case No. 2552, para. 421; 351st Report, Case No. 2355, para. 361, Case No. 2581, para. 1336; 353rd Report, Case No. 2631, para. 1357; 354th Report, Case No. 2649, para. 395; 356th Report, Case No. 2654, para. 370; 357th Report, Case No. 2698, para. 224; 362nd Report, Case No. 2741, para. 767, Case No. 2723, para. 842; 365th Report, Case No. 2723, para. 778; 367th Report, Case No. 2894, para. 335, Case No. 2885, para. 384, Case No. 2929, para. 637, Case No. 2860, para. 1182; 370th Report, Case No. 2956, para. 142; 371st Report, Case No. 3001, para. 211, Case No. 2988, para. 851; 372nd Report, Case No. 3022, para. 614; 374th Report, Case No. 3057, para. 213; 377th Report, Case No. 3107, para. 240; and 378th Report, Case No. 3111, para. 715.)

831. Public servants in state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 577; 340th Report, Case No. 2415, para. 1254; 348th Report, Case No. 2519, para. 1144; 350th Report, Case No. 2543, para. 728; 358th Report, Case No. 2735, para. 605; and 372nd Report, Case No. 3022, para. 614.)

832. Officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition.

(See the 2006 Digest, para. 578; 344th Report, Case No. 2461, para. 313; 348th Report, Case No. 2088, para. 176; 353rd Report, Case No. 2614, para. 398; 359th Report, Case No. 2776, para. 288; 371st Report, Case No. 2203, para. 534; and 374th Report, Case No. 3024, para. 556.)

833. The prohibition of the right to strike of customs officers, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association.

(See the 2006 Digest, para. 579; 357th Report, Case No. 2690, para. 947; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778.)

834. Employees performing tasks related to the administration, audit and collection of internal revenues also exercise authority in the name of the State.

(See 357th Report, Case No. 2690, para. 947.)

835. Action taken by a government to obtain a court injunction to put a temporary end to a strike in the public sector does not constitute an infringement of trade union rights.

(See the 2006 Digest, para. 580.)

C. Essential services

836. To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 581; 343rd Report, Case No. 2355, para. 469; 346th Report, Case No. 2488, para. 1328; 348th Report, Case No. 2519, para. 1141; 349th Report, Case No. 2552, para. 421; and 364th Report, Case No. 2907, para. 670.)

837. What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 582; 343rd Report, Case No. 2432, para. 1024; 348th Report, Case No. 2519, para. 1142; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2355, para. 361, Case No. 2581, para. 1336; 354th Report, Case No. 2581, para. 1114; and 372nd Report, Case No. 3038, para. 469.)

838. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 583; 343rd Report, Case No. 2432, para. 1024; and 348th Report, Case No. 2519, para. 1142.)

839. It would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not.

(See the 2006 Digest, para. 584; and 374th Report, Case No. 3057, para. 214.)

840. The following may be considered to be essential services:

the hospital sector

(See the 2006 Digest, para. 585; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2581, para. 1336; and 355th Report, Case No. 2659, para. 240);

electricity services

(See the 2006 Digest, para. 585; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2581, para. 1336; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778);

water supply services

(See the 2006 Digest, para. 585; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2581, para. 1336; 354th Report, Case No. 2649, para. 395; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778);

the telephone service

(See the 2006 Digest, para. 585; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2581, para. 1336; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778);

the police and the armed forces

(See the 2006 Digest, para. 585; and 349th Report, Case No. 2552, para. 422);

the fire-fighting services

(See the 2006 Digest, para. 585; and 351st Report, Case No. 2581, para. 1336);

public or private prison services

(See the 2006 Digest, para. 585; and 349th Report, Case No. 2552, para. 422);

the provision of food to pupils of school age and the cleaning of schools

(See the 2006 Digest, para. 585; and 360th Report, Case No. 2784, para. 243);

air traffic control

(See the 2006 Digest, para. 585; 349th Report, Case No. 2552, para. 422; 351st Report, Case No. 2581, para. 1336; 353rd Report, Case No. 2631, para. 1357; 362nd Report, Case No. 2785, para. 736, Case No. 2841, para. 1041; and 376th Report, Case No. 3079, para. 421).

841. The principle that air traffic control is an essential service applies to all strikes, whatever their form – go-slow, work-to-rule, sick-out, etc. – as these may be just as dangerous as a regular strike for the life, personal safety or health of the whole or part of the population.

(See the 2006 Digest, para. 586.)

842. The following do not constitute essential services in the strict sense of the term:

radio and television

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024; 348th Report, Case No. 2519, para. 1144; 351st Report, Case No. 2581, para. 1336; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778);

the petroleum sector and oil facilities

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2355, para. 469, Case No. 2432, para. 1024; 348th Report, Case No. 2519, para. 1144; 349th Report, Case No. 2552, para. 422; 362nd Report, Case No. 2841, para. 1036; 364th Report, Case No. 2727, para. 1082; 371st Report, Case No. 2988, para. 851; 372nd Report, Case No. 3038, para. 469; and 374th Report, Case No. 2946, para. 253);

distribution of fuel to ensure that flights continue to operate

(362nd Report, Case No. 2841, para. 1041);

the gas sector

(See 349th Report, Case No. 2552, para. 422);

filling and selling gas canisters

(See 358th Report, Case No. 2727, para. 979);

ports

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024; 348th Report, Case No. 2540, para. 817, Case No. 2519, para. 1142, Case No. 2530, para. 1191; 349th Report, Case No. 2552, para. 422; 353rd Report, Case No. 2619, para. 573; 357th Report, Case No. 2690, para. 943; and 371st Report, Case No. 2988, para. 851);

banking

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024; 349th Report, Case No. 2545, para. 1149; 351st Report, Case No. 2581, para. 1336; 362nd Report, Case No. 2723, para. 842; and 365th Report, Case No. 2723, para. 778);

the Central Bank

(See 348th Report, Case No. 2519, para. 1144);

insurance services

(See 349th Report, Case No. 2545, para. 1149);

computer services for the collection of excise duties and taxes

(See the 2006 Digest, para. 587);

department stores and pleasure parks

(See the 2006 Digest, para. 587);

the metal and mining sectors

(See the 2006 Digest, para. 587);

transport generally, including metropolitan transport

(See the 2006 Digest, para. 587; 340th Report, Case No. 2415, para. 1254; 342nd Report, Case No. 2252, para. 155; 343rd Report, Case No. 2432, para. 1024; 346th Report, Case No. 2506, para. 1071; 348th Report, Case No. 2540, para. 817, Case No. 2519, para. 1144; 349th Report, Case No. 2552, para. 422; 362nd Report, Case No. 2741, para. 767; and 371st Report, Case No. 2988, para. 851);

airline pilots

(See the 2006 Digest, para. 587; 371st Report, Case No. 2988, para. 851);

production, transport and distribution of fuel

(See the 2006 Digest, para. 587; 348th Report, Case No. 2530, para. 1191; 362nd Report, Case No. 2841, para. 1036; 364th Report, Case No. 2727, para. 1082; and 371st Report, Case No. 2988, para. 851);

rail services

(See the 2006 Digest, para. 587; 348th Report, Case No. 2519, para. 1144; and 372nd Report, Case No. 3022, para. 614);

metropolitan transport

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024; 348th Report, Case No. 2530, para. 1191; and 377th Report, Case No. 3107, para. 240);

postal services

(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024; 348th Report, Case No. 2519, para. 1144; 351st Report, Case No. 2581, para. 1336; and 367th Report, Case No. 2894, para. 335);

refuse collection services
(See the 2006 Digest, para. 587);

refrigeration enterprises
(See the 2006 Digest, para. 587);

hotel services
(See the 2006 Digest, para. 587);

construction
(See the 2006 Digest, para. 587);

car manufacturing
(See the 2006 Digest, para. 587);

agricultural activities, the supply and distribution of foodstuffs
(See the 2006 Digest, para. 587; 348th Report, Case No. 2530, para. 1191; and 363rd Report, Case No. 2704, para. 399);

tea, coffee and coconut plantations
(See 348th Report, Case No. 2519, para. 1144);

the Mint
(See the 2006 Digest, para. 587; 343rd Report, Case No. 2432, para. 1024);

the government printing service and the state alcohol, salt and tobacco monopolies
(See the 2006 Digest, para. 587);

the education sector
(See the 2006 Digest, para. 587; 344th Report, Case No. 2364, para. 91; 346th Report, Case No. 2489, para. 463, Case No. 1865, para. 772; 348th Report, Case No. 2364, para. 122; 349th Report, Case No. 2562, para. 406, Case No. 2552, para. 422, Case No. 2489, para. 686; 351st Report, Case No. 2569, para. 639; 353rd Report, Case No. 2619, para. 573; 354th Report, Case No. 2587, para. 1057; 355th Report, Case No. 2657, para. 573; and 360th Report, Case No. 2803, para. 340);

mineral water bottling companies
(See the 2006 Digest, para. 587);

aircraft repairs
(See 343rd Report, Case No. 2432, para. 1024);

elevator services
(See 344th Report, Case No. 2484, para. 1093);

export services
(See 348th Report, Case No. 2519, para. 1144);

private security services (with the exception of public or private prison services)
(See 349th Report, Case No. 2552, para. 422);

airports (with the exception of air traffic control)
(See 349th Report, Case No. 2552, para. 422);

pharmacies
(See 349th Report, Case No. 2552, para. 422);

bakeries
(See 349th Report, Case No. 2552, para. 422);

beer production
(See 364th Report, Case No. 2907, para. 670);

the glass industry
(See 374th Report, Case No. 3084, para. 871).

843. While the impact which the declaration of a full lockout in the oil and gas sector may have upon the assessment of the consequences of such collective action upon daily life is no doubt a relevant national circumstance to be taken into account by the Committee, it is necessary for such impacts to go beyond mere interference with trade and commerce and to have endangered the life, personal safety or health of the whole or part of the population for resort to compulsory arbitration to have been warranted.

(See 372nd Report, Case No. 3038, para. 470.)

844. While the Committee has found that the education sector does not constitute an essential service, it has held that principals and vice-principals can have their right to strike restricted or even prohibited.

(See the 2006 Digest, para. 588; 346th Report, Case No. 2414, para. 18, Case No. 1865, para. 772; and 351st Report, Case No. 2569, para. 639.)

845. Arguments that civil servants do not traditionally enjoy the right to strike because the State as their employer has a greater obligation of protection towards them have not persuaded the Committee to change its position on the right to strike of teachers.

(See the 2006 Digest, para. 589; 348th Report, Case No. 2364, para. 122; and 351st Report, Case No. 2569, para. 639.)

846. The possible long-term consequences of strikes in the teaching sector do not justify their prohibition.

(See the 2006 Digest, para. 590; 348th Report, Case No. 2364, para. 122; and 360th Report, Case No. 2803, para. 340.)

847. The Committee considers that in appropriate cases in which the imposition of minimum services is permissible, such as in the sector of refuse collection service, measures should be taken to guarantee that such minimum services avoid danger to public health and safety of the population.

(See 309th Report, Case No. 1916, para. 100.)

848. By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be maintained.

(See the 2006 Digest, para. 592; 353rd Report, Case No. 1865, para. 715; 362nd Report, Case No. 2723, para. 842; 363rd Report, Case No. 2602, para. 465; 365th Report, Case No. 2829, para. 577, Case No. 2723, para. 778; 370th Report, Case No. 2983, para. 285; and 372nd Report, Case No. 3038, para. 469.)

849. Within essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike.

(See the 2006 Digest, para. 593; 371st Report, Case No. 2988, para. 851; and 374th Report, Case No. 3057, para. 215.)

850. The exclusion from the right to strike of wage-earners in the private sector who are on probation is incompatible with the principles of freedom of association.

(See the 2006 Digest, para. 594.)

851. Although it has always been sensitive to the fact that a prolonged interruption in postal services can affect third parties who have no connection with the dispute and that it may, for example, have serious repercussions for companies and directly affects individuals (in particular recipients of unemployment benefits or social assistance and elderly people who depend on their pension payments), the Committee nevertheless considered that, whatever the case may be, and however unfortunate such consequences are, they do not justify a restriction of the fundamental rights of freedom of association and collective bargaining, unless they become so serious as to endanger the life, safety or health of part or all of the population.

(See 316th Report, Case No. 1985, paras 322-323; and 367th Report, Case No. 2894, para. 336.)

852. In a case in which a collective agreement included the classification of several services as essential, the Committee observed that, generally speaking, the list in the collective agreement, which went far beyond the mining sector to cover the provision of services to the community at large, corresponded to its notion of essential services. Although some of the services set out in the agreement, such as those concerning sanitation and transport, fell outside the scope of essential services in the strict sense of the term, these restrictions on the right to strike were the result of an agreement freely entered into by the two parties.

(See 346th Report, Case No. 2500, para. 325).

D. Compensatory guarantees in the event of the prohibition of strikes in the public service or in essential services

853. Where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.

(See the 2006 Digest, para. 595; 344th Report, Case No. 2467, para. 578; 349th Report, Case No. 2552, para. 421; 350th Report, Case No. 2543, para. 726; 356th Report, Case No. 2654, para. 376; 367th Report, Case No. 2860, para. 1182; and 370th Report, Case No. 2956, para. 142.)

854. In the event that an intervention would be necessary for safety reasons, the parties to the dispute should be given every opportunity to bargain collectively, for a sufficient period of time, with the help of independent facilitators and machinery and procedures designed with the foremost objective of promoting collective bargaining.

(See 344th Report, Case No. 2484, para. 1095.)

855. Based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table, which implies that whatever disputes settlement mechanism is adopted, it should be possible to suspend the compulsory arbitration process, if the parties wish to resume negotiations.

(See 344th Report, Case No. 2484, para. 1095.)

856. As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

(See the 2006 Digest, para. 596; 340th Report, Case No. 2415, para. 1256; 344th Report, Case No. 2484, para. 1095; 349th Report, Case No. 2552, para. 421; 350th Report, Case No. 2543, para. 726; 353rd Report, Case No. 2631, para. 1357; 356th Report, Case No. 2654, para. 376; 359th Report, Case No. 2383, para. 182; 367th Report, Case No. 2885, para. 384, Case No. 2929, para. 637; 370th Report, Case No. 2956, para. 142; and 371st Report, Case No. 2203, para. 534.)

857. The reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards handed down by the compulsory arbitration tribunal. Any departure from this practice would detract from the effective application of the principle that, where strikes by workers in essential services are prohibited or restricted, such prohibition should be accompanied by the existence of conciliation procedures and of impartial arbitration machinery, the awards of which are binding on both parties.

(See the 2006 Digest, para. 597; and 359th Report, Case No. 2383, para. 181.)

858. In mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned.

(See the 2006 Digest, para. 598; 340th Report, Case No. 2415, para. 1256; 356th Report, Case No. 2654, para. 382; 359th Report, Case No. 2383, para. 183; 367th Report, Case No. 2894, para. 341; and 370th Report, Case No. 2983, para. 286.)

859. The appointment by the minister of all five members of the Essential Services Arbitration Tribunal calls into question the independence and impartiality of such a tribunal, as well as the confidence of the concerned parties in such a system. The representative organizations of workers and employers should, respectively, be able to select members of the Essential Services Arbitration Tribunal who represent them.

(See the 2006 Digest, para. 599.)

860. Employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests; a corresponding denial of the right of lockout, provision of joint conciliation procedures and where, and only where, conciliation fails, the provision of joint arbitration machinery.

(See the 2006 Digest, para. 600; 355th Report, Case No. 2659, para. 241; and 371st Report, Case No. 2988, para. 854.)

861. Referring to its recommendation that restrictions on the right to strike would be acceptable if accompanied by conciliation and arbitration procedures, the Committee has made it clear that this recommendation does not refer to the absolute prohibition of the right to strike, but to the restriction of that right in essential services or in the public service, in relation to which adequate guarantees should be provided to safeguard the workers' interests.

(See the 2006 Digest, para. 601.)

862. Regarding the requirement that the parties pay for the conciliation and mediation/arbitration services, the Committee has concluded that, provided the costs are reasonable and do not inhibit the ability of the parties, in particular those with inadequate resources, to make use of the services, there has not been a violation of freedom of association on this basis.

(See the 2006 Digest, para. 602.)

863. The Committee takes no position as to the desirability of conciliation over mediation as both are means of assisting the parties in voluntarily reaching an agreement. Nor does the Committee take a position as to the desirability of a separated conciliation and arbitration system over a combined mediation-arbitration system, as long as the members of the bodies entrusted with such functions are impartial and are seen to be impartial.

(See the 2006 Digest, para. 603.)

Situations in which a minimum service may be imposed to guarantee the safety of persons and equipment (minimum safety service)

864. Restrictions on the right to strike in certain sectors to the extent necessary to comply with statutory safety requirements are normal restrictions.

(See the 2006 Digest, para. 604.)

865. In one case, the legislation provided that occupational organizations in all branches of activity were obliged to ensure that the staff necessary for the safety of machinery and equipment and the prevention of accidents continued to work, and that disagreements as to the definition of "necessary staff" would be settled by an administrative arbitration tribunal. These restrictions on the right to strike were considered to be acceptable.

(See the 2006 Digest, para. 605.)

Situations and conditions under which a minimum operational service could be required

866. The establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance.

(See the 2006 Digest, para. 606; 343rd Report, Case No. 2355, para. 469, Case No. 2432, para. 1024; 344th Report, Case No. 2509, para. 1242; 346th Report, Case No. 2506, para. 1071; 348th Report, Case No. 2355, para. 308; 349th Report, Case No. 2548, para. 538, Case No. 2534, para. 558; 362nd Report, Case No. 2841, para. 1037; and 364th Report, Case No. 2727, para. 1082.)

867. A minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption.

(See the 2006 Digest, para. 607; 344th Report, Case No. 2461, para. 313, Case No. 2484, para. 1094; 348th Report, Case No. 2433, para. 48; 349th Report, Case No. 2545, para. 1153; 350th Report, Case No. 2543, para. 727; 354th Report, Case No. 2581, para. 1114; 356th Report, Case No. 2654, para. 371; 362nd Report, Case No. 2741, para. 768, Case No. 2841, para. 1041; 371st Report, Case No. 2988, para. 851; 372nd Report, Case No. 3022, para. 614; and 377th Report, Case No. 3107, para. 240.)

868. When a service that is not essential in the strict sense of the term but is part of a very important sector in the country is brought to a standstill, measures to guarantee a minimum service may be justified.

(See 362nd Report, Case No. 2841, para. 1041; 367th Report, Case No. 2894, para. 339; and 370th Report, Case No. 2983, para. 285.)

869. It would be desirable if, in cases of industrial action which would have brought a service that is not essential in the strict sense of the term but a very important sector in the country – in this case the oil and gas sector – to a standstill, the concerned parties could reach an agreement on minimum services sufficient to address the concerns of the Government about the consequences of a full shutdown of oil and gas production, while preserving respect for the principles of the right to strike and the voluntary nature of collective bargaining. The Committee therefore encouraged the Government to examine the possibility of introducing a minimum service in that sector in the event of industrial action, the scope or duration of which may result in irreversible damages.

(See 372nd Report, Case No. 3038, paras. 471 and 472.)

870. Measures should be taken to guarantee that the minimum services avoid danger to public health and safety.

(See the 2006 Digest, para. 608; and 344th Report, Case No. 2484, para. 1094.)

871. A certain minimum service may be requested in the event of strikes whose scope and duration would cause an acute national crisis, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service.

(See the 2006 Digest, para. 609; and 349th Report, Case No. 2549, para. 368.)

872. The requisition of some striking workers in the petroleum sector to meet the refuelling needs of priority vehicles could be used in the temporary establishment of a minimum service to respond to problems of public order that could impact the life, health or security of the population.

(See 362nd Report, Case No. 2841, para. 1038.)

873. A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities.

(See the 2006 Digest, para. 610; 344th Report, Case No. 2484, para. 1094; 349th Report, Case No. 2552, para. 422; 354th Report, Case No. 2587, para. 1057; 356th Report, Case No. 2696, para. 308; 363rd Report, Case No. 2854, para. 1039; 371st Report, Case No. 2988, para. 851; and 372nd Report, Case No. 3038, para. 471.)

874. Minimum service should be restricted to the operations which are necessary to satisfy the basic needs of the population or the minimum requirements of the service, while ensuring that the scope of the minimum service does not render the strike ineffective.

(See 356th Report, Case No. 2696, para. 309.)

875. It would be desirable for actions to be taken wherever convenient so that the negotiations on the definition and organization of the minimum service not be held during a labour dispute so that all parties can examine the matters with the necessary full frankness and objectivity.

(See 356th Report, Case No. 2654, para. 375.)

876. Negotiations over the minimum service should be ideally held prior to a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. Any disagreement should be settled by an independent body, like for instance, the judicial authorities, and not by the ministry concerned.

(See 346th Report, Case No. 2506, para. 1073; 349th Report, Case No. 2506, para. 124; and 362nd Report, Case No. 2841, para. 1039.)

877. The Committee requested a government to take the necessary measures to ensure that any determination on the minimum service to be made available in the event of a strike was the result of negotiations between employers' and workers' organizations of the maritime sector, it being understood that such negotiations could take place, if not before the beginning of a conflict, between the date of the notification of the strike and its possible realization, all the more so in the light of the ongoing civil mobilization.

(See 362nd Report, Case No. 2838, para. 1076).

878. While ideally, a minimum service should be negotiated by the parties concerned, preferably prior to the existence of a dispute, the Committee recognizes that the minimum service to be provided in cases where the need arises only after the declaration of the strike can only be determined during the dispute.

(See 349th Report, Case No. 2545, para. 1152; and 344th Report, Case No. 2484, para. 1094)

879. In the absence of any agreement by the parties in this regard at the specific enterprise level, an independent body could be set up to impose a minimum service sufficient to address the concerns of the Government about the consequences of the dispute, while preserving respect for the principles of the right to strike and the voluntary nature of collective bargaining.

(See 349th Report, Case No. 2545, para. 1152.)

880. The Committee has pointed out that it is important that the provisions regarding the minimum service to be maintained in the event of a strike in an essential service are established clearly, applied strictly and made known to those concerned in due time.

(See the 2006 Digest, para. 611; and 344th Report, Case No. 2461, para. 313.)

881. The determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of overgenerous and unilaterally fixed minimum services.

(See the 2006 Digest, para. 612; 340th Report, Case No. 2415, para. 1255; 344th Report, Case No. 2509, para. 1243; 346th Report, Case No. 2506, para. 1073; 349th Report, Case No. 2548, para. 538, Case No. 2534, para. 559; 350th Report, Case No. 2543, para. 727; 354th Report, Case No. 2587, para. 1059, Case No. 2581, para. 1114; 356th Report, Case No. 2696, para. 309, Case No. 2654, para. 372; and 362nd Report, Case No. 2741, para. 768, Case No. 2841, para. 1039 and Case No. 2838, para. 1076.)

882. The workers' and employers' organizations concerned must be able to participate in determining the minimum services which should be ensured, and in the event of disagreement, legislation should provide that the matter be resolved by an independent body and not by the administrative authority.

(See 348th Report, Case No. 2540, para. 817, Case No. 2530, para. 1191; and 349th Report, Case No. 2548, para. 539 and Case No. 2534, para. 559.)

883. Unilateral determination by the employer of minimum service, if negotiation has failed, is not in conformity with the principles of freedom of association. Any disagreement in this respect should be settled by an independent body having the confidence of the parties concerned.

(See 349th Report, Case No. 2525, para. 188.)

884. As regards the legal requirement that a minimum service must be maintained in the event of a strike in essential public services, and that any disagreement as to the number and duties of the workers concerned shall be settled by the labour authority, the Committee is of the opinion that the legislation should provide for any such disagreement to be settled by an independent body and not by the ministry of labour or the ministry or public enterprise concerned.

(See the 2006 Digest, para. 613; 349th Report, Case No. 2534, para. 559; 350th Report, Case No. 2543, para. 727; 355th Report, Case No. 2659, para. 241; 362nd Report, Case No. 2741, para. 768; and 376th Report, Case No. 3096, para. 890.)

885. A definitive ruling on whether the level of minimum services was indispensable or not – made in full knowledge of the facts – can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action.

(See the 2006 Digest, para. 614; 356th Report, Case No. 2654, para. 375; and 376th Report, Case No. 3096, para. 891.)

Examples of when the Committee has considered that the conditions were met for requiring a minimum operational service

886. The ferry service is not an essential service. However, in view of the difficulties and inconveniences that the population living on islands along the coast could be subjected to following a stoppage in ferry services, an agreement may be concluded on minimum services to be maintained in the event of a strike.

(See the 2006 Digest, para. 615; 346th Report, Case No. 2506, para. 1071; 349th Report, Case No. 2506, para. 124; and 362nd Report, Case No. 2838, para. 1076.)

887. In the maritime sector, the minimum service may relate to the number of crossings carried out per day, instead of the number of staff manning the ship.

(See 353rd Report, Case No. 2506, para. 101.)

888. The services provided by the National Ports Enterprise and ports themselves do not constitute essential services, although they are an important public service in which a minimum service could be required in case of a strike.

(See the 2006 Digest, para. 616; 348th Report, Case No. 2540, para. 817; 353rd Report, Case No. 2619, para. 573; 357th Report, Case No. 2690, para. 943; and 363rd Report, Case No. 2854, para. 1039.)

889. Respect for the obligation to maintain a minimum service of the underground railway's activities to meet the minimal needs of the local communities is not an infringement of the principles of freedom of association.

(See the 2006 Digest, para. 617; 344th Report, Case No. 2509, para. 1242; and 362nd Report, Case No. 2741, para. 768.)

890. In relation to strike action taken by workers in the underground transport enterprise, the establishment of minimum services in the absence of agreement between the parties should be handled by an independent body.

(See the 2006 Digest, para. 618; and 362nd Report, Case No. 2741, para. 768.)

891. It is legitimate for a minimum service to be maintained in the event of a strike in the rail transport sector.

(See the 2006 Digest, para. 619; and 372nd Report, Case No. 3022, para. 614.)

892. In view of the particular situation of the railway services of one country, a total and prolonged stoppage could lead to a situation of acute national emergency endangering the well-being of the population, which may in certain circumstances justify government intervention, for instance by establishing a minimum service.

(See the 2006 Digest, para. 620.)

893. The transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified.

(See the 2006 Digest, para. 621; 340th Report, Case No. 2415, para. 1254; 346th Report, Case No. 1865, para. 755, Case No. 2506, para. 1071, Case No. 2488, para. 1332; 348th Report, Case No. 2540, para. 817, Case No. 2530, para. 1191; 353rd Report, Case No. 1865, para. 711; 362nd Report, Case No. 2838, para. 1076; and 377th Report, Case No. 3107, para. 240.)

894. The maintenance of a minimum service could be foreseen in the postal services.

(See the 2006 Digest, para. 622.)

895. The Mint, banking services and the petroleum sector are services where a minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied.

(See the 2006 Digest, para. 624; 346th Report, Case No. 1865, para. 755; 348th Report, Case No. 2355, para. 308; 353rd Report, Case No. 1865, para. 711; and 364th Report, Case No. 2727, para. 1082.)

896. While banking services are not essential in the strict sense of the term, the Committee does consider that in order to avoid damages which are irreversible, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authority could have imposed respect for the procedures relating to the minimum services agreed to by the parties rather than impose compulsory arbitration.

(See 349th Report, Case No. 2545, para. 1152.)

897. Given that the petroleum sector is a strategic service, of vital importance to the economic development of the country, nothing prevents a minimum service being imposed in this sector.

(See 343rd Report, Case No. 2355, para. 469.)

898. Minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration.

(See the 2006 Digest, para. 625; 353rd Report, Case No. 2619, para. 573; 354th Report, Case No. 2587, para. 1057; 356th Report, Case No. 2696, para. 308; and 360th Report, Case No. 2784, para. 243 and Case No. 2803, para. 340.)

899. The Committee considered that establishing a minimum service in the education sector is not contrary to the principles of freedom of association.

(See 354th Report, Case No. 2587, para. 1058)

900. The decision adopted by a government to require a minimum service in the Animal Health Division, in the face of an outbreak of a highly contagious disease, does not violate the principles of freedom of association.

(See the 2006 Digest, para. 626.)

901. The lasting absence of qualified maintenance of elevators and provision of basic services could potentially create a danger to public health and safety.

(See 344th Report, Case No. 2484, para. 1093.)

902. Given that the services provided by the National Institute of Meteorology and Geophysics are essential for air traffic control to be carried out safely, this is an institution in which minimum services can be established when workers have decided to call a strike.

(See 349th Report, Case No. 2534, para. 558.)

903. In the circumstances of a case concerning the employers' determination of a minimum service, the Committee considered that the production of aluminium cannot be viewed as an essential public utility for which a minimum service can be imposed.

(See 346th Report, Case No. 2525, para. 1240.)

904. Certain services, such as licensing of boiler and pressure vessels, licensing of private investigators and security guards, laundry staff and drivers in a community living division attached to public authorities should not be unilaterally declared as "essential" where minimum services must be maintained.

(See 356th Report, Case No. 2654, para. 371.)

Non-compliance with a minimum service

905. Even though the final decision to suspend or revoke a trade union's legal status is made by an independent judicial body, such measures should not be adopted in the case of non-compliance with a minimum service.

(See the 2006 Digest, para. 627.)

906. The Committee requested a government to guarantee that civil requisition is only used in cases where the minimum services established in accordance with the principles of freedom of association are not respected.

(See 349th Report, Case No. 2534, para. 560.)

Responsibility for declaring a strike illegal

907. Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved.

(See the 2006 Digest, para. 628; 342nd Report, Case No. 2356, para. 360; 343rd Report, Case No. 2355, para. 470; 346th Report, Case No. 2489, para. 464; 348th Report, Case No. 2355, para. 309, Case No. 2356, para. 368; 349th Report, Case No. 2513, para. 329, Case No. 2489, para. 686; 351st Report, Case No. 2613, para. 1091; 353rd Report, Case No. 2614, para. 401, Case No. 2650, para. 420, Case No. 2619, para. 575; 354th Report,

Case No. 2587, para. 1060; 355th Report, Case No. 2664, para. 1088; 357th Report, Case No. 2664, para. 811, Case No. 2697, para. 984; 358th Report, Case No. 2735, para. 605; 360th Report, Case No. 2664, para. 954; 362nd Report, Case No. 2723, para. 842, Case No. 2794, para. 1137; 363rd Report, Case No. 2837, para. 310, Case No.2867, para. 357; 364th Report, Case No. 2866, para. 873; 365th Report, Case No. 2723, para. 778; 368th Report, Case No.2867, para. 17; 370th Report, Case No. 2994, para. 735; 371st Report, Case No. 2928, para. 313, Case No. 3033, para. 763; and 374th Report, Case No. 3029, para. 109 and Case No. 3032, para. 416.)

908. The Committee requested the Government to take the necessary measures, including proposals on legislative measures where necessary, to ensure that the responsibility for declaring a strike legal or illegal did not lie with the Government but with an independent and impartial body.

(See 374th Report, Case No. 3029, para. 109)

909. The responsibility for declaring a strike illegal should not lie with the Government, but with an independent and impartial body.

(See 378th Report, Case No. 3032, para. 392)

910. To declare a strike or work stoppage illegal, the judicial authority is best placed to act as an independent authority.

(See 343rd Report, Case No. 2355, para. 471; and 348th Report, Case No. 2355, para. 309 and Case No. 2356, para. 368.)

911. Final decisions concerning the illegality of strikes should not be made by the government, especially in those cases in which the government is a party to the dispute.

(See the 2006 Digest, para. 629; 343rd Report, Case No. 2355, para. 471; 348th Report, Case No. 2355, para. 309; 362nd Report, Case No. 2794, para. 1137; and 367th Report, Case No. 2860, para. 1182.)

912. It is contrary to freedom of association that the right to declare a strike in the public service illegal should lie with the heads of public institutions, which are thus judges and parties to a dispute.

(See the 2006 Digest, para. 630; 358th Report, Case No. 2735, para. 605; and 367th Report, Case No. 2860, para. 1182.)

913. With reference to an official circular concerning the illegality of any strike in the public sector, the Committee has considered that such matters are not within the competence of the administrative authority.

(See the 2006 Digest, para. 631.)

Suspension of a strike

914. The responsibility for suspending a strike should not lie with the Government, but with an independent body which has the confidence of all parties concerned.

(See 374th Report, Case No. 3084, para. 872.)

915. The Committee requested the Government to take the necessary measures to amend the legislation so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body.

(See 374th Report, Case No.3084, para. 872.)

916. A provision which allows the Government to suspend a strike and impose compulsory arbitration on the grounds of national security or public health is not in itself contrary to freedom of association principles as long as it is implemented in good faith and in accordance with the ordinary meaning of the terms "national security" and "public health".

(See 374th Report, Case No. 3084, para. 871.)

Back-to-work orders, the hiring of workers during a strike, requisitioning orders

917. Strikers should be replaced only: (a) in the case of a strike in an essential service in the strict sense of the term in which the legislation prohibits strikes; and (b) where the strike would cause an acute national crisis.

(See 354th Report, Case No. 2587, para. 1061.)

918. The hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association.

(See the 2006 Digest, para. 632; 343rd Report, Case No. 2472, para. 966; 344th Report, Case No. 2465, para. 722; 346th Report, Case No. 1865, para. 757; 349th Report, Case No. 2562, para. 406, Case No. 2548, para. 538; 350th Report, Case No. 2563, para. 230; 353rd Report, Case No. 2619, para. 574; 357th Report, Case No. 2638, para. 797, Case No. 2697, para. 983; 360th Report, Case No. 2770, para. 372; 372nd Report, Case No. 3011, para. 650; and 376th Report, Case No. 3096, para. 893.)

919. If a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.

(See the 2006 Digest, para. 633; 343rd Report, Case No. 2472, para. 966; 344th Report, Case No. 2365, para. 1448; 353rd Report, Case No. 1865, para. 711; 357th Report, Case No. 2638, para. 797; and 360th Report, Case No. 2770, para. 371.)

920. Whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category

of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association.

(See the 2006 Digest, para. 634; 344th Report, Case No. 2467, para. 578; and 346th Report, Case No. 2506, para. 1075.)

921. The use of the military and requisitioning orders to break a strike over occupational claims, unless these actions aim at maintaining essential services in circumstances of the utmost gravity, constitutes a serious violation of freedom of association.

(See the 2006 Digest, para. 635.)

922. The employment of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis.

(See the 2006 Digest, para. 636; and 360th Report, Case No. 2770, para. 372.)

923. Although it is recognized that a stoppage in services or undertakings such as transport companies, railways and the oil sector might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services could cause a state of acute national emergency. The Committee has therefore considered that measures taken to mobilize workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests.

(See the 2006 Digest, para. 637.)

924. The requisitioning of iron and steel workers in the case of strikes, the threat of dismissal of strike pickets, the recruitment of underpaid workers and a ban on the joining of a trade union in order to break up lawful and peaceful strikes in services which are not essential in the strict sense of the term are not in accordance with freedom of association.

(See 236th Report, Case No. 1270, para. 620.)

925. The Committee permits the hire of non-striking workers in the case of essential services such as the health service.

(See 376th Report, Case No. 3096, para. 893.)

926. Where an essential public service, such as the telephone service, is interrupted by an unlawful strike, a government may have to assume the responsibility of ensuring its functioning in the interests of the community and, for this purpose, may consider it expedient to call in the armed forces or other persons to perform the duties which have been suspended and to take the necessary steps to enable such persons to be installed in the premises where such duties are performed.

(See the 2006 Digest, para. 639.)

Interference by the authorities during the course of the strike

927. The mere possibility of intervention by the ministry in strikes beyond essential services in the strict sense of the term, which is firmly entrenched in the law, along with the practice of intervening in areas which do not seem, at first sight, to be indispensable to the national interest, and the many modalities required for a strike to become legal as well as the serious penalties incurred in case of recourse to an illegal strike, unavoidably have a bearing on the framework and climate within which negotiations take place.

(See 346th Report, Case No. 2488, para. 1330.)

928. In one case where the government had consulted the workers in order to determine whether they wished the strike to continue or be called off, and where the organization of the ballot had been entrusted to a permanent, independent body, with the workers enjoying the safeguard of a secret ballot, the Committee emphasized the desirability of consulting the representative organizations with a view to ensuring freedom from any influence or pressure by the authorities which might affect the exercise of the right to strike in practice.

(See the 2006 Digest, para. 640.)

929. The intervention of the army in relation to labour disputes is not conducive to the climate free from violence, pressure or threats that is essential to the exercise of freedom of association.

(See the 2006 Digest, para. 641.)

Police intervention during the course of the strike

930. The Committee has recommended the dismissal of allegations of intervention by the police when the facts showed that such intervention was limited to the maintenance of public order and did not restrict the legitimate exercise of the right to strike.

(See the 2006 Digest, para. 642.)

931. The use of police for strike-breaking purposes is an infringement of trade union rights.

(See the 2006 Digest, para. 643; and 360th Report, Case No. 2747, para. 841.)

932. In cases of strike movements, the authorities should resort to the use of force only in grave situations where law and order is seriously threatened.

(See the 2006 Digest, para. 644; 340th Report, Case No. 2416, para. 1024; 349th Report, Case No. 2564, para. 611; 351st Report, Case No. 2581, para. 1332; 362nd Report, Case No. 2832, para. 1333; and 367th Report, Case No. 2938, para. 227.)

933. While workers and their organizations have an obligation to respect the law of the land, the intervention by security forces in strike situations should be limited strictly to the maintenance of public order.

(See the 2006 Digest, para. 645; 356th Report, Case No. 2478, para. 956; and 367th Report, Case No. 2938, para. 227.)

934. While workers and their organizations are obliged to respect the law of the land, police intervention to enforce the execution of a court decision affecting strikers should observe the elementary guarantees applicable in any system that respects fundamental public freedoms.

(See the 2006 Digest, para. 646; and 350th Report, Case No. 2602, para. 697.)

935. The authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order.

(See the 2006 Digest, para. 647; 340th Report, Case No. 2416, paras. 1024 and 1025; 343rd Report, Case No. 2472, para. 966; 349th Report, Case No. 2564, para. 611; 359th Report, Case No. 2760, para. 1169; 360th Report, Case No. 2747, para. 841, Case No. 2745, para. 1073; 363rd Report, Case No. 2792, para. 375; 364th Report, Case No. 2745, para. 1001; 370th Report, Case No. 2745, para. 679; and 372nd Report, Case No. 3018, para. 494 and Case No. 3011, para. 650.)

Pickets

936. The action of pickets organized in accordance with the law should not be subject to interference by the public authorities.

(See the 2006 Digest, para. 648; 346th Report, Case No. 2473, para. 1544; 356th Report, Case No. 2488, para. 148, Case No. 2652, para. 1216; 363rd Report, Case No. 2792, para. 374; and 376th Report, Case No. 3096, para. 894.)

937. The prohibition of strike pickets is justified only if the strike ceases to be peaceful.

(See the 2006 Digest, para. 649; 350th Report, Case No. 2252, para. 171; 356th Report, Case No. 2488, para. 148, Case No. 2652, para. 1216; and 376th Report, Case No. 3096, para. 894.)

938. The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work.

(See the 2006 Digest, para. 650; 346th Report, Case No. 2473, para. 1544; 350th Report, Case No. 2602, para. 694; and 376th Report, Case No. 3096, para. 894.)

939. Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries.

(See the 2006 Digest, para. 651; 343rd Report, Case No. 2432, para. 1026; 350th Report, Case No. 2602, para. 682; 353rd Report, Case No. 1865, para. 716; 354th Report, Case No. 2668, para. 676; 355th Report, Case No. 2602, para. 666; 363rd Report, Case No.2867, para. 351, Case No. 2792, para. 374; and 372nd Report, Case No. 3025, para. 152.)

940. The exercise of the right to strike should respect the freedom to work of non-strikers, as established by the legislation, as well as the right of the management to enter the premises of the enterprise.

(See the 2006 Digest, para. 652; 349th Report, Case No. 2548, para. 540; 350th Report, Case No. 2602, para. 682; and 353rd Report, Case No. 1865, para. 716.)

941. The requirement that strike pickets can only be set up near an enterprise does not infringe the principles of freedom of association.

(See the 2006 Digest, para. 653.)

Wage deductions

942. Salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles.

(See the 2006 Digest, para. 654; 344th Report, Case No. 2464, para. 330, Case No. 2467, para. 579; 353rd Report, Case No. 2614, para. 397, Case No. 2650, para. 421; 355th Report, Case No. 2657, para. 573; 358th Report, Case No. 2302, para. 18; 359th Report, Case No. 2725, para. 261; 362nd Report, Case No. 2788, para. 252, Case No. 2795, para. 326, Case No. 2741, para. 773, Case No. 2794, para. 1138; 363rd Report, Case No. 1865, para. 110, Case No.2867, para. 356; 364th Report, Case No. 2847, para. 104; 367th Report, Case No. 2938, para. 230, Case No. 2885, para. 385, Case No. 2904, para. 418, Case No. 2929, para. 639; 371st Report, Case No. 3001, para. 210; 372nd Report, Case No. 3024, para. 430; 374th Report, Case No. 3029, para. 110, Case No. 3024, para. 558; 376th Report, Case No. 3101, para. 859, Case No. 3096, para. 892; and 378th Report, Case No. 2897, para. 242.)

943. Additional sanctions, such as deductions of pay higher than the amount corresponding to the period of the strike, amount in this case to a sanction for the exercise of legitimate industrial action.

(See 362nd Report, Case No. 2741, para. 773.)

944. In a case in which the deductions of pay were higher than the amount corresponding to the period of the strike, the Committee recalled that the imposition of sanctions for strike action was not conducive to harmonious labour relations.

(See the 2006 Digest, para. 655; 344th Report, Case No. 2467, para. 579; and 378th Report, Case No. 2897, para. 242.)

945. Non-payment for the days worked by teachers in place of days of work stoppage, in particular as a result of an agreement with the governing bodies of the schools, could constitute an excessive sanction that is not conducive to the development of harmonious labour relations.

(See 355th Report, Case No. 2657, para. 574.)

946. If the salary deductions are applied to the activists of only one trade union, and all the unions have taken part in the strike, this situation would constitute de facto discriminatory treatment against the union concerned, affecting the principles of freedom of association.

(See 372nd Report, Case No. 3024, para. 430; and 374th Report, Case No. 3024, para. 558.)

947. With regard to allegations that wage deductions were carried out or threatened to be carried out only in respect of the trade union members and not the other strikers, the Committee emphasized that this would be contrary to freedom of association principles.

(See 364th Report, Case No. 2847, para. 104.)

948. Obliging the employer to pay wages in respect of strike days in cases where the employer is declared "responsible" for the strike, apart from potentially disrupting the balance in industrial relations and proving costly for the employer, raises problems of conformity with the principles of freedom of association, as such payment should be neither required nor prohibited. It should consequently be a matter for resolution between the parties.

(See the 2006 Digest, para. 656.)

949. Failure to reply to a statement of claims may be deemed an unfair practice contrary to the principle of good faith in collective bargaining, which may entail certain penalties as foreseen by law, without resulting in a legal obligation upon the employer to pay strike days, which is a matter to be left to the parties concerned.

(See the 2006 Digest, para. 657.)

950. Salary deductions for days of strike should only apply to workers who have taken part in the strike or a protest action.

(See 363rd Report, Case No.2867, para. 356.)

Sanctions

A. In the event of a legitimate strike

951. Imposing sanctions on unions for leading a legitimate strike is a grave violation of the principles of freedom of association.

(See the 2006 Digest, para. 658; and 362nd Report, Case No. 2794, para. 1138 and Case No. 2797, para. 1454.)

952. The closure of trade union offices, as a consequence of a legitimate strike, is a violation of the principles of freedom of association.

(See the 2006 Digest, para. 659.)

953. No one should be penalized for carrying out or attempting to carry out a legitimate strike.

(See the 2006 Digest, para. 660; 343rd Report, Case No. 2472, para. 966; 346th Report, Case No. 2473, para. 1532; 348th Report, Case No. 2494, para. 961; 351st Report, Case No. 2569, para. 640; 355th Report, Case No. 2664, para. 1089; 358th Report, Case No. 2735, para. 608; 359th Report, Case No. 2754, para. 680; 360th Report, Case No. 2747, para. 840; 362nd Report, Case No. 2794, para. 1138; 367th Report, Case No. 2938, para. 227; 368th Report, Case No. 2972, para. 824; 370th Report, Case No. 2994, para. 735; 372nd Report, Case No. 3004, para. 573; 374th Report, Case No. 3030, para. 536; and 376th Report, Case No. 2994, para. 1002.)

954. Penal sanctions should not be imposed on any worker for participating in a peaceful strike.

(See 374th Report, Case No. 3057, para. 217.)

955. Penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this, on the basis of the laws and regulations punishing such acts.

(See 353rd Report, Case No. 1865, para. 716.)

956. Legislative provisions which impose sanctions in relation to the threat of strike are contrary to freedom of expression and principles of freedom of association.

(See 374th Report, Case No. 3057, para. 217.)

957. The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98.

(See the 2006 Digest, para. 661; 340th Report, Case No. 2419, para. 1293; 342nd Report, Case No. 2450, para. 428; 343rd Report, Case No. 2472, para. 966; 350th Report, Case No. 2602, para. 681; 355th Report, Case No. 2602, para. 662; 358th Report, Case No. 2737, para. 636; 359th Report, Case No. 2754, para. 680; 360th Report, Case No. 2747, para. 842; 362nd Report, Case No. 2797, para. 1454; and 372nd Report, Case No. 3018, para. 494.)

958. When trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against.

(See the 2006 Digest, para. 662; 355th Report, Case No. 2664, para. 1089; 357th Report, Case No. 2664, para. 812; 358th Report, Case No. 2735, para. 606; 360th Report, Case No. 2747, para. 842; 362nd Report, Case No. 2815, para. 1370, Case No. 2797, para. 1454; 368th Report, Case No. 2972, para. 824; and 374th Report, Case No. 3030, para. 536; 380th Report, Case No. 3121, para. 140.)

959. Respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike. Logically, it should also be irrelevant that the dismissal takes place in advance of a strike, if the purpose of the dismissal is to impede or to penalize the exercise of the right to strike.

(See the 2006 Digest, para. 663; 362nd Report, Case No. 2815, para. 1370; and 371st Report, Case No. 2937, para. 653.)

960. The Committee could not view with equanimity a set of legal rules which:

a) appears to treat virtually all industrial action as a breach of contract on the part of those who participate therein;

b) makes any trade union or official thereof who instigates such breaches of contract liable in damages for any losses incurred by the employer in consequence of their actions; and

c) enables an employer faced with such action to obtain an injunction to prevent the commencement (or continuation) of the unlawful conduct. The cumulative effect of such provisions could be to deprive workers of the capacity lawfully to take strike action to promote and defend their economic and social interests.

(See the 2006 Digest, para. 664.)

961. The announcement by the government that workers would have to do overtime to compensate for the strike might in itself unduly influence the course of the strike.

(See the 2006 Digest, para. 665.)

962. The use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.

(See the 2006 Digest, para. 666; 343rd Report, Case No. 2355, para. 477; 344th Report, Case No. 2380, para. 197; 346th Report, Case No. 2488, para. 1331; 348th Report, Case No. 2355, para. 311; 353rd Report, Case No. 2380, para. 269, Case No. 2619, para. 576; 357th Report, Case No. 2702, para. 162; 362nd Report, Case No. 2794, para. 1138; 365th Report, Case No. 2902, para. 1121; and 372nd Report, Case No. 3022, para. 615 and Case No. 3011, para. 647.)

963. Should it be determined by the court or by the information gathered that any of the workers dismissed following a strike were employed in services other than those categorized as essential within the meaning of the collective agreement, necessary measures should be taken to ensure that those workers are fully reinstated in their previous positions.

(See 346th Report, Case No. 2500, para. 325.)

964. Workers who are dismissed as a result of their participation in a strike should not be deprived of their lawfully acquired retirement benefits accrued over years of working for an enterprise.

(See 360th Report, Case No. 1914, para. 104.)

B. Cases of abuse while exercising the right to strike

965. The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike.

(See the 2006 Digest, para. 667; 343rd Report, Case No. 2472, para. 959; 344th Report, Case No. 2465, para. 718, Case No. 2486, para. 1208; 348th Report, Case No. 2472, para. 936; 349th Report, Case No. 2548, para. 540; 354th Report, Case No. 2668, para. 676; 355th Report, Case No. 2602, para. 666; 356th Report, Case No. 2478, para. 956; 358th Report, Case No. 2742, para. 279; 360th Report, Case No. 2747, para. 840; 362nd Report, Case No. 2710, para. 464, Case No. 2832, para. 1333; 368th Report, Case No. 2912, para. 227; 371st Report, Case No. 2928, para. 314; and 374th Report, Case No. 2946, para. 252, Case No. 3032, para. 413 and Case No. 3030, para. 536.)

966. Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.

(See the 2006 Digest, para. 668; 340th Report, Case No. 2415, para. 1259; 343rd Report, Case No. 2472, para. 959; 346th Report, Case No. 2525, para. 1242; 348th Report, Case No. 2472, para. 936; 351st Report, Case No. 2616, para. 1012; 355th Report, Case No. 2659, para. 242; 356th Report, Case No. 2488, para. 146; 358th Report, Case No. 2616, para. 66; 362nd Report, Case No. 2723, para. 842; 363rd Report, Case No. 2602, para. 465; 365th Report, Case No. 2829, para. 577, Case No. 2723, para. 778; and 372nd Report, Case No. 3022, para. 616.)

967. The Committee considered that some of the temporary measures taken by the authorities as a result of a strike in an essential service (prohibition of the trade union's activities, cessation of the check-off of trade union dues, etc.) were contrary to the guarantees provided for in Article 3 of Convention No. 87. The Committee drew the Government's attention to the fact that the measures taken by the authorities to ensure the performance of essential services should not be out of proportion to the ends pursued or lead to excesses.

(See the 2006 Digest, para. 669.)

968. Fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike may have an intimidating effect on trade unions and inhibit their legitimate trade union activities, particularly where the cancellation of a fine of this kind is subject to the provision that no further strike considered as abusive is carried out.

(See the 2006 Digest, para. 670; and 372nd Report, Case No. 3022, para. 616.)

969. The Committee expects that any fines that could be imposed against trade unions for unlawful strikes will not be of an amount that is likely to lead to the dissolution of the union or to have an intimidating effect on trade unions and inhibit their legitimate trade union activities, and trusts that the Government would endeavour to resolve such situations by means of frank and genuine social dialogue.

(See 372nd Report, Case No. 3011, para. 649.)

C. In cases of peaceful strikes

970. The authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association.

(See the 2006 Digest, para. 671; 344th Report, Case No. 2471, para. 894; 353rd Report, Case No. 1865, para. 728; 355th Report, Case No. 2602, para. 669; 359th Report, Case No. 2760, para. 1172; 360th Report, Case No. 2747, para. 840; 362nd Report, Case No. 2812, para. 395; 364th Report, Case No. 2727, para. 1083; 367th Report, Case No. 2938, para. 227; 368th Report, Case No. 2912, para. 227; 372nd Report, Case No. 3018, para. 494; and 378th Report, Cases Nos. 3110 and 3123, para. 625.)

971. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.

(See the 2006 Digest, para. 672; 344th Report, Case No. 2471, para. 894; 348th Report, Case No. 2494, para. 962; 353rd Report, Case No. 1865, para. 715; 358th Report, Case No. 2742, para. 279; 362nd Report, Case No. 2788, para. 254, Case No. 2812, para. 395, Case No. 2741, para. 772; 363rd Report, Case No. 2854, para. 1042; 364th Report, Case No. 2727, para. 1083; and 374th Report, Case No. 3029, para. 111.)

972. Criminal sanctions may only be imposed if during a strike violence against persons or property or other infringements of common law are committed for which there are provisions set out in legal instruments and which are punishable thereunder.

(See 358th Report, Case No. 2742, para. 279.)

973. The peaceful exercise of trade union rights (strike and demonstration) by workers should not lead to arrests and deportations.

(See the 2006 Digest, para. 673; 351st Report, Case No. 2569, para. 640; and 372nd Report, Case No. 3018, para. 494.)

974. While emphasizing the importance of conducting legitimate trade union activities in a peaceful manner, the Committee considers that the criminalization of industrial relations is in no way conducive to harmonious and peaceful industrial relations.

(See 355th Report, Case No. 2602, para. 669.)

D. Large-scale sanctions

975. Arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve.

(See the 2006 Digest, para. 674; 371st Report, Case No. 2928, para. 314; 372nd Report, Case No. 3008, para. 244, Case No. 3018, para. 494; and 374th Report, Case No. 3032, para. 416.)

Discrimination in favour of non-strikers

976. Concerning measures applied to compensate workers who do not participate in a strike by bonuses, the Committee considers that such discriminatory practices constitute a major obstacle to the right of trade unionists to organize their activities.

(See the 2006 Digest, para. 675; and 367th Report, Case No. 2977, para. 861.)

Closure of enterprises in the event of a strike

977. The closure of the enterprise in the event of a strike, as provided for in the law, is an infringement of the freedom of work of persons not participating in a strike and disregards the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of employers and managerial staff to enter the installations of the enterprise and to exercise their activities).

(See the 2006 Digest, para. 676.)

978. The exercise of the right to strike and the occupation of the premises should respect the right to work of non-strikers, and the right of the management to enter its premises.

(See 356th Report, Case No. 2699, para. 1391.)

Document No. 283

Universal Declaration of Human Rights, 1948, article 20

4. *Requests* the United Nations International Children's Emergency Fund, as the United Nations agency entrusted with special responsibility for meeting emergency needs of children in many parts of the world :

(*a*) To assist in the conduct of national campaigns for the benefit of the International Children's Emergency Fund, with a view to providing international co-ordination of voluntary governmental and non-governmental appeals for the benefit of children;

(*b*) To report concerning the appeals to the ninth session of the Economic and Social Council and to the fourth regular session of the General Assembly.

Hundred and seventy-seventh plenary meeting,
8 December 1948.

216 (III). Advisory social welfare services

The General Assembly,

Having considered resolution 155 (VII) of the Economic and Social Council of 13 August 1948 on advisory social welfare services,

Approves the provisions of that resolution.

Hundred and seventy-seventh plenary meeting,
8 December 1948.

217 (III). International Bill of Human Rights

A

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

4. *Invite* le Fonds international de secours à l'enfance de l'Organisation des Nations Unies en sa qualité d'institution de l'Organisation des Nations Unies spécialement chargée de pourvoir aux pressants besoins des enfants dans de nombreuses parties du monde;

a) A contribuer à l'organisation de campagnes nationales en faveur du Fonds international de secours à l'enfance, afin d'assurer la coordination internationale des appels gouvernementaux et non gouvernementaux bénévoles en faveur de l'enfance;

b) A faire rapport sur les résultats des appels à la neuvième session du Conseil économique et social ainsi qu'à la quatrième session ordinaire de l'Assemblée générale.

Cent-soixante-dix-septième séance plénière,
le 8 décembre 1948.

216 (III). Fonctions consultatives en matière de service social

L'Assemblée générale,

Ayant examiné la résolution 155 (VII) du Conseil économique et social, en date du 13 août 1948, relative aux fonctions consultatives en matière de service social,

Approuve les dispositions de ladite résolution.

Cent-soixante-dix-septième séance plénière,
le 8 décembre 1948.

217 (III). Charte internationale des droits de l'homme

A

DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME

Préambule

Considérant que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde,

Considérant que la méconnaissance et le mépris des droits de l'homme ont conduit à des actes de barbarie qui révoltent la conscience de l'humanité et que l'avènement d'un monde où les êtres humains seront libres de parler et de croire, libérés de la terreur et de la misère, a été proclamé comme la plus haute aspiration de l'homme,

Considérant qu'il est essentiel que les droits de l'homme soient protégés par un régime de droit pour que l'homme ne soit pas contraint, en suprême recours, à la révolte contre la tyrannie et l'oppression,

Considérant qu'il est essentiel d'encourager le développement de relations amicales entre nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 3

Everyone has the right to life, liberty and the security of person.

Considérant que dans la Charte les peuples des Nations Unies ont proclamé à nouveau leur foi dans les droits fondamentaux de l'homme, dans la dignité et la valeur de la personne humaine, dans l'égalité des droits des hommes et des femmes, et qu'ils se sont déclarés résolus à favoriser le progrès social et à instaurer de meilleures conditions de vie dans une liberté plus grande,

Considérant que les États Membres se sont engagés à assurer, en coopération avec l'Organisation des Nations Unies, le respect universel et effectif des droits de l'homme et des libertés fondamentales,

Considérant qu'une conception commune de ces droits et libertés est de la plus haute importance pour remplir pleinement cet engagement,

L'Assemblée générale

Proclame la présente Déclaration universelle des droits de l'homme comme l'idéal commun à atteindre par tous les peuples et toutes les nations afin que tous les individus et tous les organes de la société, ayant cette Déclaration constamment à l'esprit, s'efforcent, par l'enseignement et l'éducation, de développer le respect de ces droits et libertés et d'en assurer, par des mesures progressives d'ordre national et international, la reconnaissance et l'application universelles et effectives, tant parmi les populations des États Membres eux-mêmes que parmi celles des territoires placés sous leur juridiction.

ARTICLE PREMIER

Tous les êtres humains naissent libres et égaux en dignité et en droits. Ils sont doués de raison et de conscience et doivent agir les uns envers les autres dans un esprit de fraternité.

ARTICLE 2

Chacun peut se prévaloir de tous les droits et de toutes les libertés proclamés dans la présente Déclaration, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation.

De plus, il ne sera fait aucune distinction fondée sur le statut politique, juridique ou international du pays ou du territoire dont une personne est ressortissante, que ce pays ou territoire soit indépendant, sous tutelle, non autonome ou soumis à une limitation quelconque de souveraineté.

ARTICLE 3

Tout individu a droit à la vie, à la liberté et à la sûreté de sa personne.

ARTICLE 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the pro-

ARTICLE 4

Nul ne sera tenu en esclavage ni en servitude; l'esclavage et la traite des esclaves sont interdits sous toutes leurs formes.

ARTICLE 5

Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants.

ARTICLE 6

Chacun a le droit à la reconnaissance en tous lieux de sa personnalité juridique.

ARTICLE 7

Tous sont égaux devant la loi et ont droit sans distinction à une égale protection de la loi. Tous ont droit à une protection égale contre toute discrimination qui violerait la présente Déclaration et contre toute provocation à une telle discrimination.

ARTICLE 8

Toute personne a droit à un recours effectif devant les juridictions nationales compétentes contre les actes violant les droits fondamentaux qui lui sont reconnus par la constitution ou par la loi.

ARTICLE 9

Nul ne peut être arbitrairement arrêté, détenu ni exilé.

ARTICLE 10

Toute personne a droit, en pleine égalité, à ce que sa cause soit entendue équitablement et publiquement par un tribunal indépendant et impartial, qui décidera. soit de ses droits et obligations, soit du bien fondé de toute accusation en matière pénale dirigée contre elle.

ARTICLE 11

1. Toute personne accusée d'un acte délictueux est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie au cours d'un procès public où toutes les garanties nécessaires à sa défense lui auront été assurées.

2. Nul ne sera condamné pour des actions ou omissions qui, au moment où elles ont été commises, ne constituaient pas un acte délictueux d'après le droit national ou international. De même, il ne sera infligé aucune peine plus forte que celle qui était applicable au moment où l'acte délictueux a été commis.

ARTICLE 12

Nul ne sera l'objet d'immixtions arbitraires dans sa vie privée, sa famille, son domicile ou sa correspondance, ni d'atteintes à son honneur et à sa réputation. Toute personne a droit à la

tection of the law against such interference or attacks.

ARTICLE 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ARTICLE 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ARTICLE 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to

protection de la loi contre de telles immixtions ou de telles atteintes.

ARTICLE 13

1. Toute personne a le droit de circuler librement et de choisir sa résidence à l'intérieur d'un État.

2. Toute personne a le droit de quitter tout pays, y compris le sien, et de revenir dans son pays.

ARTICLE 14

1. Devant la persécution, toute personne a le droit de chercher asile et de bénéficier de l'asile en d'autres pays.

2. Ce droit ne peut être invoqué dans le cas de poursuites réellement fondées sur un crime de droit commun ou sur des agissements contraires aux buts et aux principes des Nations Unies.

ARTICLE 15

1. Tout individu a droit à une nationalité.

2. Nul ne peut être arbitrairement privé de sa nationalité, ni du droit de changer de nationalité.

ARTICLE 16

1. A partir de l'âge nubile, l'homme et la femme, sans aucune restriction quant à la race, la nationalité ou la religion, ont le droit de se marier et de fonder une famille. Ils ont des droits égaux au regard du mariage, durant le mariage et lors de sa dissolution.

2. Le mariage ne peut être conclu qu'avec le libre et plein consentement des futurs époux.

3. La famille est l'elément naturel et fondamental de la société et a droit à la protection de la société et de l'État.

ARTICLE 17

1. Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété.

2. Nul ne peut être arbitrairement privé de sa propriété.

ARTICLE 18

Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction ainsi que la liberté de manifester sa religion ou sa conviction, seule ou en commun, tant en public qu'en privé, par l'enseignement, les pratiques, le culte et l'accomplissement des rites.

ARTICLE 19

Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne

hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

ARTICLE 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

ARTICLE 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit.

ARTICLE 20

1. Toute personne a droit à la liberté de réunion et d'association pacifiques.

2. Nul ne peut être obligé de faire partie d'une association.

ARTICLE 21

1. Toute personne a le droit de prendre part à la direction des affaires publiques de son pays, soit directement, soit par l'intermédiaire de représentants librement choisis.

2. Toute personne a droit à accéder, dans des conditions d'égalité, aux fonctions publiques de son pays.

3. La volonté du peuple est le fondement de l'autorité des pouvoirs publics; cette volonté doit s'exprimer par des élections honnêtes qui doivent avoir lieu périodiquement, au suffrage universel égal et au vote secret ou suivant une procédure équivalente assurant la liberté du vote.

ARTICLE 22

Toute personne, en tant que membre de la société, a droit à la sécurité sociale; elle est fondée à obtenir la satisfaction des droits économiques, sociaux et culturels indispensables à sa dignité et au libre développement de sa personnalité, grâce à l'effort national et à la coopération internationale, compte tenu de l'organisation et des ressources de chaque pays.

ARTICLE 23

1. Toute personne a droit au travail, au libre choix de son travail, à des conditions équitables et satisfaisantes de travail et à la protection contre le chômage.

2. Tous ont droit, sans aucune discrimination, à un salaire égal pour un travail égal.

3. Quiconque travaille a droit à une rémunération équitable et satisfaisante lui assurant ainsi qu'à sa famille une existence conforme à la dignité humaine et complétée, s'il y a lieu, par tous autres moyens de protection sociale.

4. Toute personne a le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

ARTICLE 24

Toute personne a droit au repos et aux loisirs et notamment à une limitation raisonnable de la durée du travail et à des congés payés périodiques.

ARTICLE 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ARTICLE 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

ARTICLE 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

ARTICLE 25

1. Toute personne a droit à un niveau de vie suffisant pour assurer sa santé, son bien-être et ceux de sa famille, notamment pour l'alimentation, l'habillement, le logement, les soins médicaux ainsi que pour les services sociaux nécessaires; elle a droit à la sécurité en cas de chômage, de maladie, d'invalidité, de veuvage, de vieillesse ou dans les autres cas de perte de ses moyens de subsistance par suite de circonstances indépendantes de sa volonté.

2. La maternité et l'enfance ont droit à une aide et à une assistance spéciales. Tous les enfants, qu'ils soient nés dans le mariage ou hors mariage, jouissent de la même protection sociale.

ARTICLE 26

1. Toute personne a droit à l'éducation. L'éducation doit être gratuite, au moins en ce qui concerne l'enseignement élémentaire et fondamental. L'enseignement élémentaire est obligatoire. L'enseignement technique et professionnel doit être généralisé; l'accès aux études supérieures doit être ouvert en pleine égalité à tous en fonction de leur mérite.

2. L'éducation doit viser au plein épanouissement de la personnalité humaine et au renforcement du respect des droits de l'homme et des libertés fondamentales. Elle doit favoriser la compréhension, la tolérance et l'amitié entre toutes les nations et tous les groupes raciaux ou religieux, ainsi que le développement des activités des Nations Unies pour le maintien de la paix.

3. Les parents ont, par priorité, le droit de choisir le genre d'éducation à donner à leurs enfants.

ARTICLE 27

1. Toute personne a le droit de prendre part librement à la vie culturelle de la communauté, de jouir des arts et de participer au progrès scientifique et aux bienfaits qui en résultent.

2. Chacun a droit à la protection des intérêts moraux et matériels découlant de toute production scientifique, littéraire ou artistique dont il est l'auteur.

ARTICLE 28

Toute personne a droit à ce que règne, sur le plan social et sur le plan international, un ordre tel que les droits et libertés énoncés dans la présente Déclaration puissent y trouver plein effet.

ARTICLE 29

1. L'individu a des devoirs envers la communauté dans laquelle seule le libre et plein développement de sa personnalité est possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Hundred and eighty-third plenary meeting,
10 December 1948.

B

RIGHT OF PETITION

The General Assembly,

Considering that the right of petition is an essential human right, as is recognized in the Constitutions of a great number of countries,

Having considered the draft article on petitions in document A/C.3/306 and the amendments offered thereto by Cuba and France,

Decides not to take any action on this matter at the present session;

Requests the Economic and Social Council to ask the Commission on Human Rights to give further examination to the problem of petitions when studying the draft covenant on human rights and measures of implementation, in order to enable the General Assembly to consider what further action, if any, should be taken at its next regular session regarding the problem of petitions.

Hundred and eighty-third plenary meeting,
10 December 1948.

C

FATE OF MINORITIES

The General Assembly,

Considering that the United Nations cannot remain indifferent to the fate of minorities,

Considering that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises,

2. Dans l'exercice de ses droits et dans la jouissance de ses libertés, chacun n'est soumis qu'aux limitations établies par la loi exclusivement en vue d'assurer la reconnaissance et le respect des droits et libertés d'autrui et afin de satisfaire aux justes exigences de la morale, de l'ordre public et du bien-être général dans une société démocratique.

3. Ces droits et libertés ne pourront, en aucun cas, s'exercer contrairement aux buts et aux principes des Nations Unies.

ARTICLE 30

Aucune disposition de la présente Déclaration ne peut être interprétée comme impliquant pour un État, un groupement ou un individu un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits et libertés qui y sont énoncés.

Cent-quatre-vingt-troisième séance plénière,
le 10 décembre 1948.

B

DROIT DE PÉTITION

L'Assemblée générale,

Considérant que le droit de pétition est un des droits essentiels de l'homme, comme le reconnaissent les constitutions de nombreux pays,

Ayant examiné le projet d'article relatif aux pétitions qui figure dans le document A/C.3/306 et les amendements à cet article déposés par Cuba et la France,

Décide de ne prendre aucune mesure à ce sujet au cours de la présente session;

Prie le Conseil économique et social d'inviter la Commission des droits de l'homme à procéder à un nouvel examen du problème des pétitions lorsqu'elle examinera le projet de pacte relatif aux droits de l'homme et aux mesures de mise en œuvre, afin que l'Assemblée générale puisse, au cours de sa prochaine session ordinaire, examiner quelles mesures doivent être prises, s'il y a lieu d'en prendre, en ce qui concerne le problème des pétitions.

Cent-quatre-vingt-troisième séance plénière,
le 10 décembre 1948

C

SORT DES MINORITÉS

L'Assemblée générale,

Considérant que les Nations Unies ne peuvent pas demeurer indifférentes au sort des minorités,

Considérant qu'il est difficile d'adopter une solution uniforme de cette question complexe et délicate qui revêt des aspects particuliers dans chaque État où elle se pose,

Considering the universal character of the Declaration of Human Rights,

Decides not to deal in a specific provision with the question of minorities in the text of this Declaration;

Refers to the Economic and Social Council the texts submitted by the delegations of the Union of Soviet Socialist Republics, Yugoslavia and Denmark on this subject contained in document A/C.3/307/Rev. 2, and requests the Council to ask the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities.

Hundred and eighty-third plenary meeting.
10 December 1948.

D

PUBLICITY TO BE GIVEN TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The General Assembly,

Considering that the adoption of the Universal Declaration of Human Rights is an historic act, destined to consolidate world peace through the contribution of the United Nations towards the liberation of individuals from the unjustified oppression and constraint to which they are too often subjected,

Considering that the text of the Declaration should be disseminated among all peoples throughout the world,

1. *Recommends* Governments of Member States to show their adherence to Article 56 of the Charter by using every means within their power solemnly to publicize the text of the Declaration and to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories;

2. *Requests* the Secretary-General to have this Declaration widely disseminated and, to that end, to publish and distribute texts, not only in the official languages, but also, using every means at his disposal, in all languages possible;

3. *Invites* the specialized agencies and non-governmental organizations of the world to do their utmost to bring this Declaration to the attention of their members.

Hundred and eighty-third plenary meeting.
10 December 1948.

Considérant le caractère universel de la Déclaration des droits de l'homme,

Décide de ne pas traiter par une disposition spécifique dans le corps de cette Déclaration la question des minorités;

Renvoie au Conseil économique et social les textes soumis par les délégations de l'Union des Républiques socialistes soviétiques, de la Yougoslavie et du Danemark sur cette question dans le document A/C.3/307/Rev. 2, et prie le Conseil d'inviter la Commission des droits de l'homme et la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités à procéder à un examen approfondi du problème des minorités, afin que l'Organisation des Nations Unies puisse adopter des mesures efficaces de protection des minorités raciales, nationales, religieuses et linguistiques.

Cent-quatre-vingt-troisième séance plénière,
le 10 décembre 1948.

D

PUBLICITÉ A DONNER À LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME

L'Assemblée générale,

Considérant que le vote de la Déclaration universelle des droits de l'homme est un acte historique, destiné à affermir la paix mondiale en faisant contribuer l'Organisation des Nations Unies à libérer l'individu de l'oppression et des contraintes illégitimes dont il est trop souvent victime,

Considérant que le texte de la Déclaration doit avoir une diffusion de caractère vraiment populaire et universel,

1. *Recommande* aux Gouvernements des États Membres de manifester leur fidélité à l'Article 56 de la Charte, en ne négligeant aucun des moyens en leur pouvoir pour publier solennellement le texte de la Déclaration et, ensuite, pour faire en sorte qu'il soit distribué, affiché, lu et commenté principalement dans les écoles et autres établissements d'enseignement, sans distinction fondée sur le statut politique des pays ou des territoires;

2. *Prie* le Secrétaire général de donner à cette Déclaration une très large diffusion et, à ces fins, de publier et faire distribuer les textes non seulement dans les langues officielles, mais encore, dans la mesure de ses moyens, dans toutes les langues possibles;

3. *Invite* les institutions spécialisées et les organisations non gouvernementales du monde à bien vouloir faire leur possible pour porter cette Déclaration à la connaissance de leurs membres.

Cent-quatre-vingt-troisième séance plénière,
le 10 décembre 1948.

F

PREPARATION OF A DRAFT COVENANT ON HUMAN RIGHTS AND DRAFT MEASURES OF IMPLEMENTATION

The General Assembly,

Considering that the plan of work of the Commission on Human Rights provides for an International Bill of Human Rights, to include a Declaration, a Covenant on Human Rights and measures of implementation,

Requests the Economic and Social Council to ask the Commission on Human Rights to continue to give priority in its work to the preparation of a draft Covenant on Human Rights and draft measures of implementation.

Hundred and eighty-third plenary meeting,
10 December 1948.

E

PREPARATION D'UN PROJET DE PACTE RELATIF AUX DROITS DE L'HOMME ET DE MESURES DE MISE EN ŒUVRE

L'Assemblée générale,

Considérant que le plan de travail de la Commission des droits de l'homme prévoit l'élaboration d'une charte internationale des droits de l'homme, qui devra comprendre une Déclaration, un Pacte relatif aux droits de l'homme et des mesures de mise en œuvre;

Invite le Conseil économique et social à demander à la Commission des droits de l'homme de continuer à donner la priorité, dans son plan de travail, à la préparation d'un projet de pacte relatif aux droits de l'homme et à l'élaboration des mesures de mise en œuvre.

Cent-quatre-vingt-troisième séance plénière,
le 10 décembre 1948.

Document No. 284

International Covenant on Economic, Social and Cultural Rights, 1966, article 8

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

UNITED NATIONS

1967

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Document No. 285

International Covenant on Civil and Political Rights, 1966, article 22

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

UNITED NATIONS

1967

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

Document No. 286

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, article 11

No. 2889

BELGIUM, DENMARK, FRANCE, FEDERAL REPUBLIC OF GERMANY, ICELAND, etc.

Convention for the Protection of Human Rights and Fundamental Freedoms. Signed at Rome, on 4 November 1950

Protocol to the above-mentioned Convention. Signed at Paris, on 20 March 1952

Official texts: English and French.

Registered on 11 August 1955 by the Council of Europe acting on behalf of the Contracting Parties in accordance with Resolution (54) 6 of the Committee of Ministers of the Council of Europe adopted on 3 April 1954.

BELGIQUE, DANEMARK, FRANCE, RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE, ISLANDE, etc.

Convention de sauvegarde des droits de l'homme et des libertés fondamentales. Signée à Rome, le 4 novembre 1950

Protocole additionnel à la Convention susmentionnée. Signé à Paris, le 20 mars 1952

Textes officiels anglais et français.

Enregistrés le 11 août 1955 par le Conseil de l'Europe agissant au nom des parties contractantes conformément à la résolution (54) 6 adoptée le 3 avril 1954 par le Comité des Ministres du Conseil de l'Europe.

Article 11

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15

(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

Document No. 287

European Social Charter (Revised), 1996, article 6

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

European Treaty Series - No. 163

European Social Charter (Revised)

Strasbourg, 3.V.1996

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1 Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1 to promote joint consultation between workers and employers;

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

2 to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

Document No. 288

Charter of Fundamental Rights of the European Union, 2000, article 28

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2012/C 326/02)

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Document No. 289

American Convention on Human Rights, 1969, article 16

No. 17955

MULTILATERAL

American Convention on Human Rights: "Pact of San José, Costa Rica". Signed at San José, Costa Rica, on 22 November 1969

Authentic texts: Spanish, English, Portuguese and French.
Registered by the Organization of American States on 27 August 1979.

MULTILATÉRAL

Convention américaine relative aux droits de l'homme : « Pacte de San José de Costa Rica ». Signée à San José (Costa Rica) le 22 novembre 1969

Textes authentiques : espagnol, anglais, portugais et français.
Enregistrée par l'Organisation des États américains le 27 août 1979.

frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. Respect for the rights or reputations of others; or

b. The protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14. RIGHT OF REPLY. 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. RIGHT OF ASSEMBLY. The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16. FREEDOM OF ASSOCIATION. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Document No. 290

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988, article 8

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

(Adopted at San Salvador, El Salvador on November 17, 1988, at the eighteenth regular session of the General Assembly)

Preamble

The States Parties to the American Convention on Human Rights "Pact San José, Costa Rica,"

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified;

Recognizing the benefits that stem from the promotion and development of cooperation among States and international relations;

Recalling that, in accordance with the Universal Declaration of Human Rights and the American Convention on Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights;

Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and

Considering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into the protective system thereof,

Have agreed upon the following Additional Protocol to the American Convention on Human Rights "Protocol of San Salvador":

The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.

Article 7

Just, Equitable, and Satisfactory Conditions of Work

The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;

b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations;

c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority;

d. Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation;

e. Safety and hygiene at work;

f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received;

g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;

h. Rest, leisure and paid vacations as well as remuneration for national holidays.

Article 8

Trade Union Rights

1. The States Parties shall ensure:

a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form

international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;

b. The right to strike.

2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.

3. No one may be compelled to belong to a trade union.

Article 9

Right to Social Security

1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.

2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

Article 10

Right to Health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

a. Primary health care, that is, essential health care made available to all individuals and families in the community;

b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;

c. Universal immunization against the principal infectious diseases;

d. Prevention and treatment of endemic, occupational and other diseases;

e. Education of the population on the prevention and treatment of health problems, and

f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Document No. 291

African Charter on Human and Peoples' Rights, 1981, article 15

ORGANIZATION OF AFRICAN UNITY ORGANISATION DE L'UNITE AFRICAINE

AFRICAN CHARTER
ON HUMAN AND PEOPLES' RIGHTS

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

ARTICLE 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encloached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Document No. 292

Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 2010, para. 59

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

PRINCIPLES AND GUIDELINES ON THE IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Right to Work (Article 15)

56. Article 15: “Every individual shall have the right to work under equitable and satisfactory conditions, and receive equal pay for equal work.”

57. The right to work is essential for the realisation of other economic, social and cultural rights. It forms an inseparable and inherent part of human dignity, and is integral to an individual’s role within society. Access to equitable and decent work, which respects the fundamental rights of the human person and the rights of workers in terms of conditions, safety and remuneration,[xviii] can also be critical for both survival and human development.

58. The right to work should not be understood as an absolute and unconditional right to obtain employment. Rather, the State has the obligation to facilitate employment through the creation of an environment conducive to the full employment of individuals within society under conditions that ensure the realisation of the dignity of the individual. The right to work includes the right to freely and voluntarily choose what work to accept.

59. The right to work includes the following obligations of the State to:

Minimum Core Obligations

a. Prohibit slavery and forced labour, which include all forms of work or service exacted from any person under the menace of any penalty and/or for which the said person has not offered himself/herself voluntarily. It includes also all forms of economic exploitation of children[xix] and other members of vulnerable and disadvantaged groups.

b. Ensure the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights. These rights include the right to form and join a trade union of choice (including the right not to), the right of trade unions to join national and international federations and confederations, and the right of trade unions to function freely without undue interference.

c. Provide adequate protection against unfair or unjustified arbitrary and constructive dismissal, and other unfair labour practices.

National Plans, Policies and Systems

d. Adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers (in both the formal and informal sectors) and the unemployed.

e. Take appropriate steps to realise the right of everyone to gain their living by work which they freely choose and accept. Such steps include, for example, technical and vocational guidance and training programmes; policies to achieve steady economic; social and cultural development and full productive employment; administration of services to assist and support individuals in order to enable them to identify and find available employment including the

Document No. 293

Arab Charter on Human Rights, 2004, article 35

(*Translated from Arabic*)

Arab Charter on Human Rights

Based on the faith of the Arab nation in the dignity of the human person whom God has exalted ever since the beginning of creation and in the fact that the Arab homeland is the cradle of religions and civilizations whose lofty human values affirm the human right to a decent life based on freedom, justice and equality,

In furtherance of the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion and the other divinely-revealed religions,

Being proud of the humanitarian values and principles that the Arab nation has established throughout its long history, which have played a major role in spreading knowledge between East and West, so making the region a point of reference for the whole world and a destination for seekers of knowledge and wisdom,

Believing in the unity of the Arab nation, which struggles for its freedom and defends the right of nations to self-determination, to the preservation of their wealth and to development; believing in the sovereignty of the law and its contribution to the protection of universal and interrelated human rights and convinced that the human person's enjoyment of freedom, justice and equality of opportunity is a fundamental measure of the value of any society,

Rejecting all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security, recognizing the close link that exists between human rights and international peace and security, reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam,

CHR/NONE/2004/40/Rev.1
GE.04-14687 (E) 300604 010704

2. Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work.

3. The States parties recognize the right of the child to be protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

(a) Define a minimum age for admission to employment;

(b) Establish appropriate regulation of working hours and conditions;

(c) Establish appropriate penalties or other sanctions to ensure the effective enforcement of these provisions.

4. There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

5. Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.

Article 35

1. Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

3. Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force.

Article 36

The States parties shall ensure the right of every citizen to social security, including social insurance.

Article 37

The right to development is a fundamental human right and all States are required to establish the development policies and to take the measures needed to guarantee this right. They have a duty to give effect to the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. By virtue of this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

Article 38

Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Article 39

1. The States parties recognize the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind.

2. The measures taken by States parties shall include the following:

(a) Development of basic health-care services and the guaranteeing of free and easy access to the centres that provide these services, regardless of geographical location or economic status;

Document No. 294

Charter of Fundamental Social Rights in the Southern African Development Community, 2003, article 4

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

CHARTER OF FUNDAMENTAL SOCIAL RIGHTS IN SADC

ARTICLE 3

BASIC HUMAN RIGHTS AND ORGANISATIONAL RIGHTS

1. This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.

2. Member States undertake to observe the basic rights referred to in this charter.

ARTICLE 4

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Member States shall create an enabling environment consistent with ILO Conventions on freedom of association, the right to organise and collective bargaining so that:

a) employers and workers of the Region shall have the right to form employers associations or trade unions of their choice for the promotion and defence of their economic and social interests;

b) every employer and every worker shall have the freedom to join or not to join such employers associations or trade unions without any personal or occupational damage being thereby suffered by him or her;

c) employers associations and trade unions shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice;

d) the industrial disputes settlement machinery and method of operation shall be autonomous, accessible, efficient and subject to tripartite consultation and in agreement with guaranteed right of recourse to established appeals or review procedures;

e) the right to resort to collective action in the event of a dispute remaining unresolved shall:

i) for workers, include the right to strike and to traditional collective bargaining;

ii) for employers, include traditional collective bargaining and remedies consistent with ILO instruments and other international laws;

f) organisational rights for representative unions shall include:

(i) the right of access to employer premises for union purposes subject to agreed procedures;
(ii) the right to deduct trade union dues from members' wages;
(iii) the right to elect trade union representatives;
(iv) the right to choose and appoint full time trade union officials;
(v) the right of trade union representatives to education and training leave; and
(vi) the right of the trade unions to disclosure of information;

g) essential services and their parameters shall mutually be defined and agreed upon by governments, employers associations and trade unions;

h) due to the unique nature of essential services, appropriate and easily accessible machinery for quick resolution of disputes shall be put in place by governments, employers and trade unions;

i) freedom of association and collective bargaining rights shall apply to all areas including export processing zones.

ARTICLE 5

CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANISATION

For the purposes of attaining the objectives of this Charter:

a) Member States shall establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labour (Nos. 29 and 105), freedom of association and collective bargaining (Nos. 87 and 98), elimination of discrimination in employment (Nos. 100 and 111), and the minimum age of entry into employment (No. 138) and other relevant instruments;

Document No. 295

Canada–Costa Rica Agreement on Labour Cooperation, 2001, article 1 and annex 1

Canada-Costa Rica Agreement on Labour Cooperation

- Text of the Canada-Costa Rica Agreement on Labour Cooperation

The Canada-Costa Rica Agreement on Labour Cooperation (CCRALC) was signed in April 2001 in tandem with the bilateral free trade agreement (CCRFTA) between the two countries. It became effective in November 2002.

The CCRALC provides a framework for dealing with labour issues in the context of trade liberalization. Its two pillars are cooperation and the effective enforcement of domestic labour laws. In the Agreement, both countries commit to reflect internationally-recognized core labour principles and rights in their domestic labour legislation, and to improve governance by administering and enforcing those laws in a fair, transparent, and effective manner.

The core labour principles and rights set out in the Agreement are based on the International Labour Organization's *Declaration on Fundamental Principles and Rights at Work* (1998), which represents a global consensus on the international core labour rights that countries are to promote, regardless of their level of economic development.

Preamble

The Government of Canada and the Government of the Republic of Costa Rica:

Recalling their resolve to:

- create an expanded and secure market for the goods produced in their territories,
- create new employment opportunities and improve working conditions and living standards in their respective territories, and
- protect, enhance and enforce basic workers' rights;

Affirming their continuing respect for each other's Constitution and law;

Reaffirming that both countries are members of the International Labour Organisation (ILO (International Labour Organisation));

Acknowledging that technical cooperation on labour matters ensures that in the context of a strategy for economic and social development, economic and social policies are mutually reinforcing components of sustainable development;

Recognizing that differences exist in their respective levels of development and sizes of their economies;

Convinced of the benefits to be gained from further cooperation between them on labour matters;

Have Agreed as follows:

Part One - Objectives

Article 1: Objectives

The objectives of this Agreement are to:

1. improve working conditions and living standards in each Party's territory;

2. promote, to the maximum extent possible, the labour principles and rights set out in Annexes 1 and 2;
3. encourage cooperation to promote innovation and rising levels of productivity and quality in each Party's territory;
4. encourage publication and exchange of information and joint studies in order to enhance understanding of the labour law and institutions in each Party's territory;
5. pursue cooperative labour-related activities on the basis of mutual benefit;
6. promote compliance with and effective enforcement by each Party of its labour law; and
7. foster full and open exchange of information between the Parties in regard to the application of their labour law.

Part Two - Obligations

Article 2: General Commitments

Affirming full respect for each Party's Constitution and labour law and recognizing the right of each Party to establish its own labour standards in its territory and to adopt or modify accordingly its labour law, and set its priorities in the execution of its labour policies, each Party shall ensure that its labour law embodies and provides protection for the labour principles and rights set out in Annexes 1 and 2.

Article 3: Scope of the Agreement

Labour law is considered to fall within the scope of this Agreement if it is directly related to the labour principles and rights set out in Annexes 1 and 2.

Article 4: Government Enforcement Action

1. Each Party shall, subject to Article 24, promote compliance with and effectively enforce its labour law through appropriate government

For the Republic of
Costa Rica

Annex 1 - Fundamental Principles and Rights at Work

The Parties are committed to respecting and promoting the principles and rights recognized in the ILO (International Labour Organisation) *Declaration on Fundamental Principles and Rights at Work*. The Parties shall reflect these in their laws, regulations, procedures and practices:

- freedom of association and protection of the right to organize;
- the right to bargain collectively;
- the right to strike;
- prohibition of forced labour;
- labour protections for children and young persons;
- elimination of discrimination; and
- equal pay for women and men.

Annex 2 - Additional Labour Priniples and Rights

The following are the guiding principles and rights that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They cover broad areas of concern where the Parties have developed, each in its own way, jurisprudence, laws, regulations, procedures and practices that protect the rights and interests of their respective workers:

- minimum employment standards;
- prevention of occupational injuries and illnesses; and
- compensation in cases of occupational injuries or illnesses.

Document No. 296

Canada–Colombia Agreement on Labour Cooperation, 2008, article 1

Canada-Colombia Agreement on Labour Cooperation

- Text of the Canada-Colombia Agreement on Labour Cooperation
- Public communication CAN 2016-1 (Colombia)
  - Public communication CAN 2016-1 (Colombia) – Accepted for review
  - Review of Public Communication CAN 2016-1 – Report issued pursuant to the Canada-Colombia Agreement on Labour Cooperation
  - Action Plan under the Canada-Colombia Agreement on Labour Cooperation - 2018-2021

The Canada-Colombia Free Trade Agreement (CCOFTA) and its parallel accords on labour and the environment were signed on November 21, 2008, and came into effect on August 15, 2011.

The Canada-Colombia Labour Cooperation Agreement (LCA) is based on cooperation between the parties to promote and enforce fundamental labour principles and rights at work.

Through the LCA, both countries are committed to ensuring that their laws respect the International Labour Organization's 1998 Declaration on Fundamental Principles and Rights at Work.

Recognizing the importance of encouraging voluntary practices of corporate social responsibility within their territories or jurisdictions, to ensure coherence between labour and economic objectives; and

Building on existing institutions and mechanisms in Canada and Colombia to achieve the preceding economic and social goals;

Have agreed as follows**:**

Part one: Obligations

Article 1: General obligations

1. Each Party shall ensure that its statutes and regulations, and practices thereunder, embody and provide protection for the following internationally recognized labour principles and rights:
    a. freedom of association and the right to collective bargaining (including protection of the right to organize and the right to strike);
    b. the elimination of all forms of forced or compulsory labour;
    c. the effective abolition of child labour (including protections for children and young persons);
    d. the elimination of discrimination in respect of employment and occupation;
    e. acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety; and
    f. providing migrant workers with the same legal protections as the Party's nationals in respect of working conditions.
2. To the extent that the principles and rights stated above relate to the ILO, subparagraphs (a) to (d) above refer only to the ILO 1998 Declaration, whereas those stated in subparagraphs (e) and (f) more closely relate to the ILOs̀ Decent Work Agenda.

Article 2: Non-derogation

Document No. 297

Canada-Peru Agreement on Labour Cooperation, 2008, article 1

Canada-Peru Agreement on Labour Cooperation

- Text of the Canada-Peru Agreement on Labour Cooperation (CPALC)
- Full text of the CPALC in PDF 128 KB)

The Canada-Peru Free Trade Agreement (FTA) and its parallel accords on labour and the environment were signed on May 29, 2008, and came into effect on August 1, 2009.

The Canada-Peru Agreement on Labour Cooperation is based on cooperation between the parties to promote and enforce fundamental labour principles and rights at work.

Key elements of the Labour Cooperation Agreement include:

- Canada and Peru have committed to ensuring their laws respect the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work of 1998.
- Canada and Peru are also committed to provide protections for occupational safety and health, migrant workers, as well as minimum employment standards such as minimum wages and overtime pay.
- The Agreement enables the public to submit complaints to either country concerning the compliance of labour laws with the principles found in the ILO Declaration, or a perceived failure to enforce

Have agreed as follows:

Part one - Obligations

Article 1: General Obligations

1. Each Party shall ensure that its statutes and regulations, and practices thereunder, embody and provide protection for the following internationally recognized labour principles and rights:
    a. freedom of association and the right to collective bargaining (including protection of the right to organize and the right to strike);
    b. the elimination of all forms of forced or compulsory labour;
    c. the effective abolition of child labour (including protections for children and young persons);
    d. the elimination of discrimination in respect of employment and occupation;
    e. acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety; and
    f. providing migrant workers with the same legal protections as the Party's nationals in respect of working conditions.
2. To the extent that the principles and rights stated above relate to the ILO, subparagraphs (a) to (d) refer only to the ILO Declaration, whereas those stated in subparagraphs (e) and (f) more closely relate to the ILO's Decent Work Agenda.

Article 2: Non-Derogation

A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights referred to in Article 1 to encourage trade or investment.

Article 3: Government Enforcement Action

Document No. 298

Canada-Jordan Agreement on Labour Cooperation, 2009, article 1

Agreement on Labour Cooperation between Canada and Jordan

- Text of the Canada-Jordan Agreement on Labour Cooperation
- Full text of agreement in PDF (131 KB)

On June 28, 2009, Canada and Jordan signed a free trade agreement (FTA) and two parallel agreements in the areas of labour and environment. These agreements entered into force on October 1, 2012.

The Canada-Jordan Agreement on Labour Cooperation is based on cooperation between the Parties to promote and enforce fundamental labour principles and rights at work. It also provides for an open and transparent dispute resolution process.

Key elements of the Labour Cooperation Agreement include:

- Canada and Jordan have committed to ensuring that their laws respect the International Labour Organization (ILO)'s 1998 Declaration on Fundamental Principles and Rights at Work.
- Canada and Jordan are also committed to providing protections for occupational safety and health, migrant workers, acceptable minimum employment standards such as minimum wages and overtime pay, and compensation for occupational injuries and illnesses.

Building on existing institutions and mechanisms in Canada and Jordan to achieve the preceding economic and social goals;

Have agreed as follows:

Part one
Obligations

Article 1: General Commitments

1. Each Party shall ensure that its labour law and practices embody and provide protection for the following internationally recognized labour principles and rights:
    a. freedom of association and the right to collective bargaining (including protection of the right to organize and the right to strike);
    b. the elimination of all forms of forced or compulsory labour;
    c. the effective abolition of child labour (including protections for children and young persons);
    d. the elimination of discrimination in respect of employment and occupation (including equal pay for women and men);
    e. acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;
    f. the prevention of occupational injuries and illnesses;
    g. compensation in cases of occupational injuries or illnesses; and
    h. non-discrimination in respect of working conditions for migrant workers.
2. To the extent that the principles and rights stated above relate to the ILO, paragraphs (a) to (d) refer only to the ILO 1998 Declaration, whereas the rights stated in paragraphs (e), (f), (g) and (h) more closely relate to the ILO's Decent Work Agenda.

Article 2: Non-Derogation

Document No. 299

Southern African Development Community Protocol on Employment and Labour, 2014, article 6

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

PROTOCOL ON EMPLOYMENT AND LABOUR

Work and Governance Conventions, the African Charter on Human and Peoples' Rights, the SADC Charter of Fundamental Social Rights, and other international and regional instruments.

2. State Parties shall take appropriate steps to ratify and implement all ILO Core and Governance Conventions.

3. State Parties are encouraged to establish national and regional mechanisms to assist them with:

   (a) the domestication and implementation of ratified ILO conventions and other international as well as regional instruments; and

   (b) compliance with the reporting and monitoring systems of the ILO and other international and regional organisations.

4. State Parties undertake to observe the basic rights and freedoms in this Protocol.

ARTICLE 6

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

State Parties shall, consistent with ILO Conventions on Freedom of Association, the Right to Organize and Collective Bargaining, ensure in particular that:

(a) employers and workers have a right to form and join an employers' association or trade union and to participate freely in the activities and programmes of such association or union;

(b) every employers' association or trade union has the right to determine its own administration, programmes and activities; and to form and join a federation;

(c) employers' associations and trade unions have the right and freedom to organise and conclude collective bargaining agreements;

(d) the industrial disputes settlement machinery and method of operation is autonomous, accessible, and efficient;

(e) the right to take collective action in the event of a dispute remaining unresolved includes:

   (i) for workers, the right to collective bargaining and resort to lawful strike action; and

(ii) for employers, the right to collective bargaining and remedies consistent with national laws;

(f) organisational rights for representatives of unions are adequately protected;

(g) freedom of association and collective bargaining rights apply to all areas of economic activities including export processing zones and other economic zones.

ARTICLE 7
EQUAL TREATMENT

1. State Parties shall adopt laws and policies to ensure that every person is equal and accorded equal treatment and equal protection before the law.

2. State Parties undertake to promote equality of opportunity in employment and labour market policies and legislation and social security and to eliminate all forms of direct or indirect discrimination on grounds such as sex, gender, colour, nationality, race, religion, language, ethnic or social origin, political opinion, pregnancy, marital status, disability, age, or HIV and AIDS.

3. State Parties shall ensure compliance with ILO Conventions on Discrimination and Equality (Nos. 100 and 111), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the SADC Protocol and the Declaration on Gender and Development and other relevant international and regional instruments so as to ensure gender equity and equality, equal treatment and opportunities for men and women as regards access to employment, remuneration for work of equal value, working conditions, social protection, education, vocational training and career development; and where necessary provide specific employment and social security needs of women which may arise as a result of reproductive roles.

4. Legislative, administrative and other appropriate measures shall be adopted to ensure:

   (a) equal pay for work of equal value, and equal remuneration for jobs of equal value for women and men;

   (b) the eradication of occupational segregation and all forms of employment discrimination;

   (c) adoption of reasonable measures to enable men and women to reconcile their occupational and family obligations; and

Document No. 300

Agreement between the United States of America, the United Mexican States, and Canada, 2018, article 23.3

CHAPTER 23

LABOR

Article 23.1: Definitions

For the purposes of this Chapter:

ILO Declaration on Rights at Work means the International Labor Organization (ILO) *Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)*;

labor laws means statutes and regulations, or provisions of statutes and regulations, of a Party that are directly related to the following internationally recognized labor rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) acceptable conditions of work with respect to minimum wages,[1] hours of work, and occupational safety and health;

statutes and regulations and **statutes or regulations** means:[2]

(a) for Mexico, Acts of Congress or regulations and provisions promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United Mexican States; and

(b) for the United States, Acts of Congress or regulations promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United States.

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[1] For greater certainty, a Party's labor laws regarding "acceptable conditions of work with respect to minimum wages" include requirements under that Party's labor laws to provide wage-related benefit payments to, or on behalf of, workers, such as those for profit sharing, bonuses, retirement, and healthcare.

[2] For greater certainty, for each Party setting out a definition, which has a federal form of government, its definition provides coverage for substantially all workers.

Article 23.2: Statement of Shared Commitments

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration on Rights at Work and the ILO *Declaration on Social Justice for a Fair Globalization (2008).*

2. The Parties recognize the important role of workers' and employers' organizations in protecting internationally recognized labor rights.

3. The Parties also recognize the goal of trading only in goods produced in compliance with this Chapter.

Article 23.3: Labor Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Rights at Work:[3, 4, 5]

(a) freedom of association[6] and the effective recognition of the right to collective bargaining;[7]

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor and, for the purposes of this Agreement, a prohibition on the worst forms of child labor; and

(d) the elimination of discrimination in respect of employment and occupation.

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[3] The obligations set out in this Article, as they relate to the ILO, refer only to the ILO Declaration on Rights at Work.

[4] A failure to comply with an obligation under paragraphs 1 or 2 must be in a manner affecting trade or investment between the Parties. For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

[5] For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

[6] For greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike.

[7] Annex 23-A (Worker Representation in Collective Bargaining in Mexico) sets out obligations with regard to worker representation in collective bargaining.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Article 23.4: Non-Derogation

The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labor laws. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

(a) implementing Article 23.3.1 (Labor Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or

(b) implementing Article 23.3.1 or Article 23.3.2 (Labor Rights), if the waiver or derogation would weaken or reduce adherence to a right set out in Article 23.3.1 (Labor Rights), or to a condition of work referred to in Article 23.3.2 (Labor Rights), in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory;

in a manner affecting trade or investment between the Parties.[8, 9]

[8] For greater certainty, a waiver or derogation is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

[9] For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 23.5: Enforcement of Labor Laws

1. No Party shall fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction[10] in a manner affecting trade or investment between the Parties[11, 12] after the date of entry into force of this Agreement.

2. Each Party shall promote compliance with its labor laws through appropriate government action, such as by:

(a) appointing and training inspectors;

(b) monitoring compliance and investigating suspected violations, including through unannounced on-site inspections, and giving due consideration to requests to investigate an alleged violation of its labor laws;

(c) seeking assurances of voluntary compliance;

(d) requiring record keeping and reporting;

(e) encouraging the establishment of labor-management committees to address labor regulation of the workplace;

(f) providing or encouraging mediation, conciliation, and arbitration services;

(g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor laws; and

(h) implementing remedies and sanctions imposed for noncompliance with its labor laws, including timely collection of fines and reinstatement of workers.

3. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains

[10] For greater certainty, a "sustained or recurring course of action or inaction" is "sustained" if the course of action or inaction is consistent or ongoing, and is "recurring" if the course of action or inaction occurs periodically or repeatedly and when the occurrences are related or the same in nature. A course of action or inaction does not include an isolated instance or case.

[11] For greater certainty, a "course of action or inaction" is "in a manner affecting trade or investment between the Parties" if the course involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

[12] For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labor enforcement activities among the fundamental labor rights and acceptable conditions of work enumerated in Article 23.3.1 and Article 23.3.2 (Labor Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

4. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Article 23.6: Forced or Compulsory Labor

1. The Parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.

2. To assist in the implementation of paragraph 1, the Parties shall establish cooperation for the identification and movement of goods produced by forced labor as provided for under Article 23.12.5(c) (Cooperation).

Article 23.7: Violence Against Workers

The Parties recognize that workers and labor organizations must be able to exercise the rights set out in Article 23.3 (Labor Rights) in a climate that is free from violence, threats, and intimidation, and the imperative of governments to effectively address incidents of violence, threats, and intimidation against workers. Accordingly, no Party shall fail to address violence or threats of violence against workers, directly related to exercising or attempting to exercise the rights set out in Article 23.3 (Labor Rights), in a manner affecting trade or investment between the Parties.[13, 14]

[13] For greater certainty, a failure is "in a manner affecting trade or investment between the Parties" if it involves: (i) a person or industry that produces a good or supplies a service traded between the Parties or has an investment in the territory of the Party that has failed to comply with this obligation; or (ii) a person or industry that produces a good or supplies a service that competes in the territory of a Party with a good or a service of another Party.

[14] For purposes of dispute settlement, a panel shall presume that a failure is in a manner affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.

Article 23.8: Migrant Workers

The Parties recognize the vulnerability of migrant workers with respect to labor protections. Accordingly, in implementing Article 23.3 (Labor Rights), each Party shall ensure that migrant workers are protected under its labor laws, whether they are nationals or non-nationals of the Party.

Article 23.9: Discrimination in the Workplace

The Parties recognize the goal of eliminating discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace. Accordingly, each Party shall implement policies[15] that it considers appropriate to protect workers against employment discrimination on the basis of sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity, and caregiving responsibilities; provide job-protected leave for birth or adoption of a child and care of family members; and protect against wage discrimination.

Article 23.10: Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labor laws, including by ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that a person with a recognized interest under its law in a particular matter has appropriate access to tribunals for the enforcement of its labor laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals, or labor tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labor laws:

(a) are fair, equitable and transparent;

(b) comply with due process of law;

(c) do not entail unreasonable fees or time limits or unwarranted delay; and

[15] The United States' existing federal agency policies regarding the hiring of federal workers are sufficient to fulfill the obligations set forth in this Article. The Article thus requires no additional action on the part of the United States, including any amendments to Title VII of the Civil Rights Act of 1964, in order for the United States to be in compliance with the obligations set forth in this Article.

(d) that any hearings in these proceedings are open to the public, except where the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that:

(a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(b) final decisions on the merits of the case:

(i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard,

(ii) state the reasons on which they are based, and

(iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

5. Each Party shall provide, as appropriate, that parties to these proceedings have the right to seek review and, if warranted, correction of decisions issued in these proceedings.

6. Each Party shall ensure that tribunals that conduct or review these proceedings are impartial and independent.

7. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under its labor laws and that these remedies are executed in a timely manner.

8. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

9. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

10. Each Party shall ensure that other types of proceedings within its labor bodies for the implementation of its labor laws:

(a) are fair and equitable;

(b) are conducted by officials who meet appropriate guarantees of impartiality;

(c) do not entail unreasonable fees or time limits or unwarranted delay; and

(d) document and communicate decisions to persons directly affected by these proceedings.

Article 23.11: Public Submissions

1. Each Party, through its contact point designated under Article 23.15 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

2. Each Party shall:

(a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate; and

(b) make the submission and the results of its consideration available to the other Parties and the public, as appropriate, in a timely manner.

3. A Party may request from the person or organization that made the submission additional information that is necessary to consider the substance of the submission.

Article 23.12: Cooperation

1. The Parties recognize the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles and rights stated in the ILO Declaration on Rights at Work.

2. The Parties may, commensurate with the availability of resources, cooperate through:

(a) exchanging of information and sharing of best practices on issues of common interest, including through seminars, workshops, and online fora;

(b) study trips, visits, and research studies to document and study policies and practices;

(c) collaborative research and development related to best practices in subjects of mutual interest;

(d) specific exchanges of technical expertise and assistance, as appropriate; and

(e) other forms as the Parties may decide.

3. In undertaking cooperative activities, the Parties shall consider each Party's priorities and complementarity with initiatives in existence, with the aim to achieve mutual benefits and measurable labor outcomes.

4. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities.

5. The Parties may develop cooperative activities in the following areas:

(a) labor laws and practices, including the promotion and effective implementation of the principles and rights as stated in the ILO Declaration on Rights at Work;

(b) labor laws and practices related to compliance with ILO Convention No. 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*;

(c) identification and movement of goods produced by forced labor;

(d) combatting forced labor and human trafficking, including on fishing vessels;

(e) addressing violence against workers, including for trade union activity;

(f) occupational safety and health, including the prevention of occupational injuries and illnesses;

(g) institutional capacity of labor administrative and judicial bodies;

(h) labor inspectorates and inspection systems, including methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;

(i) remuneration systems and mechanisms for compliance with labor laws pertaining to hours of work, minimum wages and overtime, and employment conditions;

(j) addressing gender-related issues in the field of labor and employment, including:

(i) elimination of discrimination on the basis of sex in respect of employment, occupation, and wages,

(ii) developing analytical and enforcement tools related to equal pay for equal work or work of equal value,

(iii) promotion of labor practices that integrate and retain women in the job market, and building the capacity and skills of women workers, including on workplace challenges and in collective bargaining,

(iv) consideration of gender issues related to occupational safety and health and other workplace practices, including advancement of child care, nursing mothers, and related policies and programs, and in the prevention of occupational injuries and illnesses, and

(v) prevention of gender-based workplace violence and harassment;

(k) promotion of productivity, innovation, competitiveness, training and human capital development in workplaces, particularly in respect to SMEs;

(l) addressing the opportunities of a diverse workforce, including:

(i) promotion of equality and elimination of employment discrimination in the areas of age, disability, race, ethnicity, religion, sexual orientation, gender identity, and other characteristics not related to merit or the requirements of employment, and

(ii) promotion of equality, elimination of employment discrimination, and protection of migrant workers and other vulnerable workers, including low-waged, casual, or temporary workers;

(m) collection and use of labor statistics, indicators, methods, and procedures, including on the basis of sex;

(n) social protection issues, including workers' compensation in case of occupational injury or illness, pension systems, and employment assistance schemes;

(o) labor relations, including forms of cooperation and dispute resolution to improve labor relations among workers, employers, and governments;

(p) apprenticeship programs;

(q) social dialogue, including tripartite consultation and partnership;

(r) with respect to labor relations in multi-national enterprises, promoting information sharing and dialogue related to conditions of employment by enterprises operating

in two or more Parties with representative worker organizations in each of the cooperating Parties; and

(s) other areas as the Parties may decide.

6. The Parties may establish cooperative arrangements with the ILO or other international and regional organizations to draw on their expertise and resources to further the purposes of this Chapter.

Article 23.13: Cooperative Labor Dialogue

1. A Party may request dialogue with another Party on any matter arising under this Chapter at any time by delivering a written request to the contact point that the other Party has designated under Article 23.15 (Contact Points).

2. The requesting Party shall include information that is specific and sufficient to enable the receiving Party to respond, including identification of the matter at issue, an indication of the basis of the request under this Chapter and, when relevant, how trade or investment between the Parties is affected.

3. Unless the requesting and receiving Parties (the dialoguing Parties) decide otherwise, dialogue must commence within 30 days of a Party's receipt of a request for dialogue. The dialoguing Parties shall engage in dialogue in good faith. As part of the dialogue, the dialoguing Parties shall provide a means for receiving and considering the views of interested persons on the matter.

4. Dialogue may be held in person or by any technological means available to the dialoguing Parties.

5. The dialoguing Parties shall address all the issues raised in the request. If the dialoguing Parties resolve the matter, they shall document the outcome, including, if appropriate, specific steps and timelines that they have decided upon. The dialoguing Parties shall make the outcome available to the public, unless they decide otherwise.

6. In developing an outcome pursuant to paragraph 5, the dialoguing Parties should consider all available options and may jointly decide on a course of action they consider appropriate, including:

(a) the development and implementation of an action plan in a form that they find satisfactory, which may include specific and verifiable steps, such as on labor inspection, investigation, or compliance action, and appropriate timeframes;

(b) the independent verification of compliance or implementation by individuals or entities, such as the ILO, chosen by the dialoguing Parties; and

(c) appropriate incentives, such as cooperative programs and capacity building, to encourage or assist the dialoguing Parties to identify and address labor matters.

Article 23.14: Labor Council

1. The Parties hereby establish a Labor Council composed of senior governmental representatives at the ministerial or other level from trade and labor ministries, as designated by each Party.

2. The Labor Council shall meet within one year of the date of entry into force of this Agreement and thereafter every two years, unless the Parties decide otherwise.

3. The Labor Council may consider any matter within the scope of this Chapter and perform other functions as the Parties may decide.

4. In conducting its activities, including meetings, the Labor Council shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter. If practicable, meetings will include a public session or other means for Council members to meet with the public to discuss matters relating to the implementation of this Chapter.

5. During the fifth year after the date of entry into force of this Agreement, or as otherwise decided by the Parties, the Labor Council shall review the operation and effectiveness of this Chapter and thereafter may undertake subsequent reviews as decided by the Parties.

6. Labor Council decisions and reports shall be made by consensus and be made publicly available, unless the Council decides otherwise.

7. The Labor Council shall issue a joint summary report or statement on its work at the end of each Council meeting.

Article 23.15: Contact Points

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, an office or official within its labor ministry or equivalent entity as a contact point to address matters related to this Chapter. Each Party shall notify the other Parties in writing promptly in the event of a change to its contact point.

2. The contact points shall:

(a) facilitate regular communication and coordination between the Parties, including responding to requests for information and providing sufficient information to enable a full examination of matters related to this Chapter;

(b) assist the Labor Council;

(c) report to the Labor Council, as appropriate;

(d) act as a channel for communication with the public in their respective territories; and

(e) work together, including with other appropriate agencies of their governments, to develop and implement cooperative activities, guided by the priorities of the Labor Council, areas of cooperation identified in Article 23.12.5 (Cooperation), and the needs of the Parties.

3. Contact points may communicate and coordinate activities in person or through electronic or other means of communication.

4. Each Party's contact point, in carrying out its responsibilities under this Chapter, shall regularly consult and coordinate with its trade ministry.

Article 23.16: Public Engagement

Each Party shall establish or maintain, and consult with, a national labor consultative or advisory body or similar mechanism, for members of its public, including representatives of its labor and business organizations, to provide views on matters regarding this Chapter.

Article 23.17: Labor Consultations

1. The Parties shall make every effort through cooperation and dialogue to arrive at a mutually satisfactory resolution of any matter arising under this Chapter.

2. A Party (the requesting Party) may request labor consultations with another Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter.

3. A third Party that considers it has a substantial interest in the matter may participate in the labor consultations by notifying the other Parties (the consulting Parties) in writing through their respective contact points, no later than seven days after the date of delivery of the request for labor

consultations. The third Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties decide otherwise, they shall enter into labor consultations no later than 30 days after the date of delivery of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through labor consultations, which may include appropriate cooperative activities. The consulting Parties may request advice from independent experts chosen by the consulting Parties to assist them.

6. *Ministerial Labor Consultations*: If the consulting Parties have failed to resolve the matter, a consulting Party may request that the relevant Ministers or their designees of the consulting Parties convene to consider the matter at issue by delivering a written request to the other consulting Party through its contact point. The Ministers of the consulting Parties shall convene promptly after the date of receipt of the request, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts chosen by the consulting Parties to assist them, and having recourse to procedures such as good offices, conciliation, or mediation.

7. If the consulting Parties are able to resolve the matter, they shall document the outcome, including, if appropriate, specific steps and timelines decided upon. The consulting Parties shall make the outcome available to the other Party and to the public, unless they decide otherwise.

8. If the consulting Parties fail to resolve the matter within 75 days after the date of receipt of a request for Labor consultations under paragraph 2, or any other period as the consulting Parties may agree, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel).

9. Labor consultations shall be confidential and without prejudice to the rights of a Party in another proceeding.

10. Labor consultations pursuant to this Article may be held in person or by any technological means available to the consulting Parties. If the labor consultations are held in person, they must be held in the capital of the Party to which the request for labor consultations was made, unless the consulting Parties decide otherwise.

11. In labor consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

12. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

13. A Party may have recourse to labor consultations under this Article without prejudice to the commencement or continuation of Cooperative Labor Dialogue under Article 23.13 (Cooperative Labor Dialogue).

ANNEX 23-A

WORKER REPRESENTATION IN COLLECTIVE BARGAINING IN MEXICO

1. Mexico shall adopt and maintain the measures set out in paragraph 2, which are necessary for the effective recognition of the right to collective bargaining, given that the Mexican government incoming in December 2018 has confirmed that each of these provisions is within the scope of the mandate provided to the government by the people of Mexico in the elections.

2. Mexico shall:

(a) Provide in its labor laws the right of workers to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union.

(b) Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements and the recognition of unions, through legislation establishing:

(i) an independent entity for conciliation and registration of unions and collective bargaining agreements, and

(ii) independent Labor Courts for the adjudication of labor disputes.

The legislation shall provide for the independent entity for conciliation and registration to have the authority to issue appropriate sanctions against those who violate its orders. The legislation also shall provide that all decisions of the independent entity are subject to appeal to independent courts, and that officials of the independent entity who delay, obstruct, or influence the outcome of any registration process in favor or against a party involved, will be subject to sanctions under Article 48 of the Federal Labor Law (*Ley Federal del Trabajo*) and Articles 49, 52, 57, 58, 61, 62 and other applicable provisions of the General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*).

(c) Provide in its labor laws, through legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), for an effective system to verify that elections of union leaders are carried out through a personal, free, and secret vote of union members.

(d) Provide in its labor laws that union representation challenges are carried out by the

Labor Courts through a secret ballot vote, and are not subject to delays due to procedural challenges or objections, including by establishing clear time limits and procedures, consistent with Mexico's obligations under Article 23.10.3(c) and Article 23.10.10(c) (Public Awareness and Procedural Guarantees).

(e) Adopt legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), requiring:

(i) verification by the independent entity that collective bargaining agreements meet legal requirements related to worker support in order for them to be registered and take legal effect; and

(ii) for the registration of an initial collective bargaining agreement, majority support, through exercise of a personal, free, and secret vote of workers covered by the agreement and effective verification by the independent entity, through, as justified under the circumstances, documentary evidence (physical or electronic), direct consultations with workers, or on-site inspections that:

(A) the worksite is operational,

(B) a copy of the collective bargaining agreement was made readily accessible to individual workers prior to the vote, and

(C) a majority of workers covered by the agreement demonstrated support for the agreement through a personal, free, and secret vote.

(f) Adopt legislation in accordance with Mexico's Constitution (*Constitución Política de los Estados Unidos Mexicanos*), which provides that, in future revisions to address salary and work conditions, all existing collective bargaining agreements shall include a requirement for majority support, through the exercise of personal, free, and secret vote of the workers covered by those collective bargaining agreements.

The legislation shall also provide that all existing collective bargaining agreements shall be revised at least once during the four years after the legislation goes into effect. The legislation shall not imply the termination of any existing collective bargaining agreements as a consequence of the expiration of the term indicated in this paragraph, as long as a majority of the workers covered by the collective bargaining agreement demonstrate support for such agreement through a personal, free, and secret vote.

The legislation shall also provide that the revisions must be deposited with the independent entity. In order to deposit the future revisions, the independent entity

shall effectively verify, through, as justified under the circumstances, documentary evidence (physical or electronic), direct consultation with workers, or on-site inspections that:

(i) a copy of the revised collective bargaining agreement was made readily accessible to the workers covered by the collective bargaining agreement prior to the vote, and

(ii) a majority of workers covered by the revised agreement demonstrated support for that agreement through a personal, free, and secret vote.

(g) Provide in its labor laws:

(i) that each collective bargaining agreement negotiated by a union and a union's governing documents are made available in a readily accessible form to all workers covered by the collective bargaining agreement, through enforcement of Mexico's General Law on Transparency and Access to Public Information (*Ley General de Transparencia y Acceso a la Información Pública*), and

(ii) for the establishment of a centralized website that provides public access to all collective bargaining agreements in force and that is operated by an independent entity that is in charge of the registration of collective bargaining agreements.

3. It is the expectation of the Parties that Mexico shall adopt legislation described above before January 1, 2019. It is further understood that entry into force of this Agreement may be delayed until such legislation becomes effective.

Document No. 301

HRC, CCPR/C/79/Add.104 (1999), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 25

United Nations CCPR/C/79/Add.104

International Covenant on Civil and Political Rights

Distr.: General
30 March 1999

Original: English

Human Rights Committee
Sixty-fifth session

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Chile

1. The Committee considered the fourth periodic report of Chile (CCPR/C/95/Add.11) at its 1733rd and 1734th meetings (CCPR/C/SR.1733–1734), held on 24 March 1999, and adopted the following concluding observations at its 1740th meeting (CCPR/C/SR.1740), held on 30 March 1999.

A. Introduction

2. The Committee welcomes the State party's comprehensive fourth periodic report, covering the important changes that have taken place in that country since 1990. The Committee takes note of the useful information contained in the report concerning draft legislative proposals. However, it regrets the lateness in the submission of the report and of the core document.

3. It appreciates the additional information provided by the delegation in its dialogue with the Committee.

B. Positive aspects

4. The Committee welcomes the progress made since considering the State party's third periodic report in re-establishing democracy in Chile after the military dictatorship, as well as the initiatives for reform of legislation that is incompatible with the State party's obligations under the Covenant.

5. The establishment of the National Women's Service (SERNAM) and of the National Commission for Family and the adoption of the Domestic Violence Act, the National Committee on Child Labour Eradication and the Judicial Academy are all positive developments.

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The Committee recommends that steps be taken by the State party to improve the participation of women, if necessary, by adopting affirmative action programmes.

20. The continuation in force of legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Therefore:

The law should be amended so as to abolish the crime of sodomy as between adults.

21. The minimum age for marriage, 12 years for girls and 14 years for boys, raises issues of compliance by the State party with its duty under article 24, paragraph 1, to offer protection to minors. Furthermore, marriage at such a young age would generally mean that the persons involved do not have the mental maturity to ensure that the marriage is entered into with free and full consent, as required under article 23, paragraph 3, of the Covenant. Therefore:

The State party should amend the law so as to introduce a uniform minimum age for marriage of males and females, which will ensure the maturity required in order for the marriage to comply with the requirements of article 23, paragraph 3, of the Covenant.

22. The Committee takes note of the various legislative and administrative measures taken to respect and ensure the rights of persons belonging to indigenous communities in Chile to enjoy their own culture. Nevertheless, the Committee is concerned by hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. Therefore:

When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.

23. The Committee is concerned by the lack of comprehensive legislation that would prohibit discrimination in the public and private spheres, such as employment and housing. Under article 2, paragraph 3, and article 26 of the Covenant, the State party is under a duty to protect persons against such discrimination. Therefore:

Legislation should be enacted to prohibit discrimination and provide an effective remedy to those whose right not to be discriminated against is violated. The Committee also recommends the establishment of a national defender of human rights or other effective agency to monitor the implementation of anti-discrimination legislation.

24. The special status granted in public law to the Roman Catholic and Orthodox churches involves discrimination between persons on account of their religion and may impede freedom of religion. Therefore:

The State party should amend the law so as to give equal status to all religious communities that exist in Chile.

25. The general prohibition imposed on the right of civil servants to organize a trade union and bargain collectively, as well as their right to strike, raises serious concerns, under article 22 of the Covenant. Therefore:

The State party should review the relevant provisions of laws and decrees in order to guarantee to civil servants the rights to join trade unions and to bargain collectively, guaranteed under article 22 of the Covenant.

Document No. 302

HRC, CCPR/CO/80/LTU (2004), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 18

UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/CO/80/LTU
4 May 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighteth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

LITHUANIA

1. The Committee considered the second periodic report of Lithuania (CCPR/C/LTU/2003/2) at its 2181st and 2182nd meetings, on 24 and 25 March 2004, and subsequently adopted, at the 2192nd meeting, held on 1 April 2004 the following concluding observations.

A. Introduction

2. The Committee welcomes the second report of Lithuania and expresses its appreciation for a frank and constructive discussion with the delegation. It welcomes the concise nature of the report and pertinent information provided on the practical implementation of legislation.

B. Positive aspects

3. The Committee appreciates the ongoing efforts of the State party to reform its legal system and revise its legislation so that the protection they offer is in accordance with the Covenant. In particular, it welcomes the establishment of the Parliamentary Committee on Human Rights and the adoption of three ombudsmen institutions: the Parliamentary Ombudsmen, the Ombudsman for Equal Opportunities and the Ombudsman for the Rights of the Child. The Committee encourages the State party to extend the powers of the latter two Ombudsmen to enable them to bring court actions in the same way as the Parliamentary Ombudsmen.

16. The Committee reiterates the concern expressed in its concluding observations on the State party's previous report that the registration process continues to make distinctions between different religions, and that this amounts to unequal treatment contrary to articles 18 and 26. It notes that religious communities that do not meet the registration criteria are disadvantaged in that they may not register as legal persons and, therefore, as acknowledged by the delegation, may face certain difficulties, inter alia with respect to the restitution of property.

The State party should ensure that there is no discrimination in law or in practice in the treatment of different religions.

17. The Committee reiterates the concern expressed in its concluding observations on the previous report about conditions of alternative service available to conscientious objectors to military service, in particular with respect to the eligibility criteria applied by the Special Commission and the duration of such service as compared with military service.

The Committee recommends that the State party clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief, to ensure that the right to freedom of conscience and religion is respected by permitting in practice alternative service outside the defence forces, and that the duration of service is not punitive in nature (arts. 18 and 26).

18. The Committee is concerned that the new Labour Code is too restrictive in providing, inter alia, for the prohibition of strikes in services that cannot be considered as essential and requiring a two-thirds majority to call a strike, which may amount to a violation of article 22.

The State party should make the necessary amendments to the Labour Code to ensure the protection of the rights guaranteed under article 22 of the Covenant.

19. The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.

20. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the implementation of the Committee's recommendations in paragraphs 7, 9 and 13 above. The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 April 2009.

Document No. 303

HRC, CCPR/C/EST/CO/3 (2010), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 15

United Nations CCPR/C/EST/CO/3

International Covenant on Civil and Political Rights

Distr.: General
4 August 2010

Original: English

Human Rights Committee
Ninety-ninth session
Geneva, 12–30 July 2010

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Estonia

1. The Committee considered the third periodic report submitted by Estonia (CCPR/C/EST/3) at its 2715th and 2716th meetings, held on 12 and 13 July 2010 (CCPR/C/SR.2715 and CCPR/C/SR.2716), and adopted the following concluding observations at its 2736th meeting (CCPR/C/SR. 2736), held on 27 July 2010.

A. Introduction

2. The Committee welcomes the timely submission of the third report of Estonia and expresses its appreciation for the constructive dialogue that the Committee had with the delegation. It welcomes the detailed information provided on measures adopted by the State party and on its forthcoming plans to further implement the Covenant. The Committee is also grateful to the State party for the written replies submitted in advance in response to the Committee's written questions, as well as for the additional detailed information provided orally and in writing by the delegation.

B. Positive aspects

3. The Committee, which notes the sustained commitment by the State party to the protection of human rights, welcomes the following legislative and other measures:

(a) The adoption of a new Code of Criminal Procedure, which entered into force in 2004;

(b) The adoption of the Victim Support Act, which entered into force in 2004;

(c) The amendment to the Penal Code (sect. 133), which entered into force in 2007, which improves the definition of elements of enslavement;

The State party should review its legislation and practice in order to broaden the rights of persons living in same-sex relationship, in particular to facilitate the granting of a residence permit to non-citizens in same-sex partnership with a partner already residing in the State party.

11. While noting that a person whose asylum application has been rejected can appeal before an administrative court, the Committee remains concerned that according to the Act on Granting International Protection to Aliens, the appeal has no suspensive effect (art. 2, 13).

The Committee reiterates its recommendation that a decision declaring an asylum application inadmissible should not entail the denial of a suspensive effect upon appeal.

12. The Committee is concerned that mentally disabled persons or their legal guardians, where appropriate, are often denied the right to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance. The Committee is further concerned by the fact that experts appointed to assess a patient's need for continued coercive treatment work in the same hospital as the one in which the patient is held (art. 14).

The State party should guarantee that mentally disabled persons or their legal guardians, where appropriate, are sufficiently informed about criminal proceedings and charges against them and enjoy the right to a fair hearing and the right to adequate and effective legal assistance for their defence. It should also ensure that experts appointed to assess patients' need of continued coercive treatment are impartial. Furthermore, the State party should provide training to judges and lawyers on the rights which ought to be guaranteed to mentally disabled persons tried in criminal courts.

13. While noting the improvements in the Code of Criminal Procedure to reduce the length of criminal proceedings, the Committee remains concerned that there are no special provisions for criminal proceedings, when the person indicted is detained (art. 14).

The State party should review its Code of Criminal Procedure in order to insert provisions stipulating the need to expedite proceedings where the accused persons are being detained.

14. The Committee is concerned that few of the applications for an alternative to military service have been approved during the last few years (11 of 64 in 2007, 14 of 68 in 2008, 32 of 53 in 2009). It is also concerned about the lack of clear grounds for accepting or rejecting an application for an alternative to military service (art. 18, 26).

The State party should clarify the grounds under which applications for an alternative to military service are accepted or rejected and take relevant measures to ensure that the right to conscientious objection is upheld.

15. While noting that the present draft Public Service Act presented to Parliament includes a provision restricting the number of public servants not authorized to strike, the Committee is concerned that public servants who do not exercise public authority do not fully enjoy the right to strike (art. 22).

The State party should ensure in its legislation that only the most limited number of public servants is denied the right to strike.

16. While noting the implementation of the "Integration in the Estonian society 2000–2007" programme and the "Estonian Integration 2008–2013" programme by the State party, the Committee is concerned that the Estonian language proficiency requirements continue to impact negatively on employment and income levels for members of the

Document No. 304

HRC, CCPR/C/DOM/CO/6 (2017), Concluding observations on the sixth periodic report of the Dominican Republic, paras 31–32

United Nations CCPR/C/DOM/CO/6

International Covenant on Civil and Political Rights

Distr.: General
27 November 2017
English
Original: Spanish

Human Rights Committee

Concluding observations on the sixth periodic report of the Dominican Republic*

1. The Committee considered the sixth periodic report of the Dominican Republic (CCPR/C/DOM/6) at its 3416th and 3417th meetings (see CCPR/C/SR.3416 and 3417), held on 16 and 17 October 2017. At its 3441st meeting (see CCPR/C/SR.3441), held on 3 November 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of the Dominican Republic and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken to implement the provisions of the Covenant during the reporting period. The Committee is grateful to the State party for its written replies (CCPR/C/DOM/Q/6/Add.1) to the list of issues (CCPR/C/DOM/Q/6), which were supplemented by the oral responses provided by the delegation, and for the additional information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party during the period under review in the area of civil and political rights, including:

(a) The adoption of the Organic Act on Equal Rights for Persons with Disabilities No. 5-13 of 2013 and the associated implementing regulations of 2016;

(b) The establishment of the system for tracking the implementation of United Nations recommendations in order to compile recommendations by United Nations bodies;

(c) The adoption of the Organic Act on the National Police No. 590-16 of 2016 and the regulations on the use of force.

4. The Committee welcomes the State party's accession to/ratification of the following international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, acceded to on 21 September 2016;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified on 14 October 2016.

* Adopted by the Committee at its 121st session (16 October–10 November 2017).

GE.17-20972 (E) 271217 281217

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Corruption

29. The Committee is concerned about reports of high corruption rates in the State party at all levels of government, including allegations of bribes being paid to access basic services and to influence government officials, and about the impunity surrounding some of these cases (art. 25).

30. **The State party should step up efforts to fight and eradicate corruption and impunity at all levels, including through the investigation of cases, most importantly by the Public Prosecution Service, and the appropriate punishment of those responsible, taking into account the recommendations of the Conference of the States Parties to the United Nations Convention against Corruption in respect of the Criminal Code, bribery and misappropriation of funds by public officials.**

Freedom of expression, freedom of association and violence against human rights defenders and journalists

31. The Committee is concerned at the acts of violence and intimidation to which human rights defenders and journalists, including those who oppose Constitutional Court ruling No. TC/0168/13, are subjected. It regrets the lack of information on the steps taken to safeguard the right of migrant workers to freedom of assembly and association, which includes the right to engage in trade union activities without the exercise of these rights triggering the loss of their employment or their deportation. The Committee is further concerned at reports that the right to freedom of association and the right to organize are restricted by employers and supervisors (arts. 6, 7, 19, 21 and 22).

32. **The State party should pursue its efforts to guarantee the effective protection of human rights defenders and journalists who are victims of threats, violence and intimidation. It should also ensure that these incidents are investigated promptly, thoroughly, independently and impartially, that the perpetrators are tried and punished with appropriate penalties and that the victims receive assistance, protection and comprehensive reparation. Furthermore, it should ensure that migrant workers effectively enjoy their right to freedom of peaceful assembly and that the exercise of this right does not become justification for dismissal or deportation. The State party should adopt measures to safeguard workers' freedom of association in practice, including the right to organize, the right to collective bargaining and the right to strike.**

Rights of the child and birth certificates

33. While it notes the State party's efforts to increase birth registrations, the Committee is concerned at the low rate of registration, especially in cases where one of the parents does not hold Dominican nationality. It is also concerned at reports of barriers and unreasonable requirements for the registration of children of Haitian descent, including when one of the parents is of Dominican origin, putting them at risk of statelessness and limiting the exercise of their rights. It is further concerned that children born in the Dominican Republic to parents of Haitian descent or to foreign parents who are in an irregular situation are registered as foreigners. The Committee is also concerned at the prevalence of child marriage, particularly in rural and poor areas (arts. 16, 23 and 24).

34. **The State party should continue efforts to ensure that all children born in its territory, including those who were not born in a hospital or whose parents are not of Dominican nationality, are registered and issued with an official birth certificate. Furthermore, it should ensure that Dominican nationality is recognized and granted in keeping with the principle of non-discrimination. In addition, it should take the necessary steps to eradicate child marriage in law and in practice, including through the adoption of legislative measures to introduce an absolute ban and to raise the minimum marriage age from 16 to 18 years for both spouses.**

Document No. 305

HRC, CCPR/C/EST/CO/4 (2019), Concluding observations on the fourth periodic report of Estonia, paras 31–32

United Nations CCPR/C/EST/CO/4

International Covenant on Civil and Political Rights

Distr.: General
18 April 2019

Original: English

Human Rights Committee

Concluding observations on the fourth periodic report of Estonia*

1. The Committee considered the fourth periodic report of Estonia (CCPR/C/EST/4) at its 3570th and 3571st meetings (see CCPR/C/SR.3570 and 3571), held on 4 and 5 March 2019. At its 3596th meeting, held on 21 March 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its fourth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/EST/QPR/4). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The amendments to the Victim Support Act, on 1 January 2017;

(b) The adoption of the national action plan for implementation of European Union emergency relocation and resettlement schemes;

(c) The adoption of the Welfare Development Plan for 2016–2023.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 12 February 2014;

(b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 30 May 2012.

* Adopted by the Committee at its 125th session (4–29 March 2019).

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Freedom of association

31. While welcoming the significantly lower number of civil servants affected by a prohibition of strike action following the amendments to the Civil Service Act in 2013, the Committee echoes the concern of the Committee on Economic, Social and Cultural Rights regarding the strike ban on civil servants under the Act (E/C.12/EST/CO/3, para. 26). The Committee is also concerned about the requirements set forth in the Collective Labour Dispute Resolution Act that may adversely affect the meaningful exercise of the right to strike in practice, inter alia by limiting the duration of a warning strike to one hour as opposed to three days for sympathy strikes (art. 22).

32. **The Committee reiterates the recommendation made by the Committee on Economic, Social and Cultural Rights (E/C.12/EST/CO/3, para. 27) that the Civil Service Act be reviewed with a view to allowing civil servants who do not provide essential services to exercise their right to strike. The State party should refrain from imposing any undue limitations on the right to strike and should ensure that the Collective Labour Dispute Resolution Act is in full conformity with article 22 of the Covenant.**

Prisoners' right to vote

33. The Committee is concerned about the general denial of the right to vote to all prisoners convicted of any criminal offence, and recalls that a blanket denial does not meet the requirements of article 10 (3), read in conjunction with article 25, of the Covenant. While noting that the issue has been addressed by the authorities, including by the Supreme Court in the context of several court cases, and that steps towards amending relevant legislation have been taken, the Committee regrets that progress in that regard remains slow (arts. 10, 25 and 26).

34. **The State party should review its legislation that denies convicted prisoners the right to vote in the light of the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote (para. 14).**

Nationality

35. While welcoming the measures taken to resolve the situation of persons "with undetermined citizenship", including the 2015 amendments to the Citizenship Act granting children with undetermined citizenship born in Estonia the right to automatically acquire Estonian citizenship, the Committee remains concerned at (a) the limited scope of the amendments insofar as they exclude certain categories of stateless children; (b) the stringent language requirements that form part of the naturalization tests; and (c) the adverse impact of the "undetermined citizenship" status on the right of long-term residents to political participation (arts. 24, 25 and 26).

36. **The State party should strengthen its efforts to reduce and prevent statelessness by addressing the remaining gaps, including by:**

(a) **Establishing a statelessness determination procedure that ensures that stateless individuals are systematically identified and afforded protection;**

(b) **Facilitating the naturalization of persons with "undetermined citizenship" and removing excessive barriers that hinder the process;**

(c) **Ensuring that every child has a nationality, in accordance with article 24 (3) of the Covenant, including by granting citizenship to stateless children aged between 15 and 18 as at 1 January 2016 and to children born to stateless parents, irrespective of their legal status.**

Rights of minorities

37. While welcoming the measures taken and the progress made with regard to the integration of the Russian-speaking minority, including the improved proficiency in Estonian language, the Committee remains concerned at the remaining gaps (CCPR/C/EST/CO/3, para. 16), particularly those relating to the impact of the language

Document No. 306

CESCR, E/C.12/1/Add.68 (2001), Concluding observations, Germany, paras 22, 40

UNITED NATIONS **E**

Economic and Social Council

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24 September 2001

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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Twenty-sixth (extraordinary) session
13-31 August 2001

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

GERMANY

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Germany on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.3) at its 48th and 49th meetings (E/C.12/2001/48 and 49), held on 24 August 2001, and adopted, at its 58th meeting (E/C.12/2001/58), held on 31 August 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the third periodic report of the State party, which was prepared in general conformity with the Committee's guidelines.

3. The Committee notes with appreciation the high quality of the extensive written and oral replies given by the State party, as well as the open and constructive dialogue with the delegation, which included government officials with expertise in the subjects relevant in the context of the Covenant.

13. The Committee reiterates its concern about the lack of any court decisions in which reference is made to the Covenant and its provisions, as indicated by the statement made by the State party in its written replies to the list of issues and as confirmed by the delegation during its dialogue with the Committee. The Committee is concerned that judges are not provided with adequate training on human rights, in particular on the rights guaranteed in the Covenant. A similar lack of human rights training is discerned among prosecutors and other actors responsible for the implementation of the Covenant.

14. The Committee expresses its concern that there is no comprehensive and consistent system in place that ensures that the Covenant is taken into account in the formulation and implementation of all legislation and policies concerning economic, social and cultural rights.

15. The Committee regrets that, according to UNDP, the State party devoted 0.26 per cent of its GNP to official development assistance (ODA) in 1998, well below the goal of 0.7 per cent set by the United Nations.

16. The Committee is concerned about the considerable length of time taken to process applications for asylum, resulting in the limitation of the enjoyment of the economic, social and cultural rights enshrined in the Covenant by asylum-seekers and their dependents.

17. The Committee is concerned that, despite the great efforts made by the State party to narrow the gap between the new and the old Länder, considerable differences continue to exist, particularly in terms of generally lower standards of living, a higher unemployment rate, and lower wages for civil servants in the new Länder.

18. The Committee expresses its concern about the high levels of unemployment that continue to persist in the State party, especially among the youth. The problem of youth unemployment is particularly grave in the new Länder, resulting in the migration of young persons to the old Länder. The Committee is further concerned that vocational training programmes for the youth are not adequately adapted to their needs.

19. Like the ILO, the Committee is concerned about the persisting impediments to women in German society, in terms of promotion in employment and equal wages for work of equal value, both in the private and public sectors, and especially in federal bodies and academic institutions, despite the efforts of the State party to give a new impetus to the equal participation of women in the labour market.

20. The Committee is concerned that the State party has not adequately addressed the issue of illegal workers who are employed in the "shadow economy", such as workers in households, hotel and catering industries, agriculture and the cleaning and building industries, who do not enjoy any rights or protection and do not get paid regularly or adequately.

21. The Committee is concerned that prisoners who undertake labour for private companies may be doing so without having expressed their prior consent.

22. The Committee reiterates its concern, in line with the Human Rights Committee and the ILO Committee of Experts, that the prohibition by the State party of strikes by public servants

other than public officials who do not provide essential services, such as judges, so-called Beamte and teachers, constitutes a restriction of the activities of trade unions that is beyond the scope of article 8 (2) of the Covenant. The Committee disagrees with the State party's statement that "a strike would be incompatible with this duty of loyalty and would run counter to the purpose of a professional civil service" (E/C.12/4/Add.3, para. 82), as this interpretation of "the administration of the State" mentioned in article 8 (2) of the Covenant exceeds the more restrictive interpretations by the Committee, the ILO (Convention No. 98) and the European Court of Justice.

23. The Committee is concerned that the State party's reformed social security, and the pension system under reform, do not take sufficiently into consideration the needs of families, women, elderly persons and the more disadvantaged groups in society. The Committee notes that the pension reform is currently still in progress, but that the Federal Constitutional Court recently referred to potential discrimination against families under the scheme as envisaged.

24. The Committee expresses its grave concern about inhumane conditions in nursing homes owing to structural deficiencies in nursing, as confirmed by the Medical Service of the national associations of health insurances (MDS).

25. The Committee is concerned that the victims of trafficking in persons, and in particular women, are doubly victimized, owing to a lack of sensitization of police, judges and public prosecutors, a lack of appropriate care for victims, and the risks and dangers awaiting them upon deportation to their home countries.

26. The Committee is concerned about the shortage of child day care institutions, which constitutes an obstacle to women's equal participation in the labour market, as well as to the State party's efforts to promote gender equality.

27. The Committee reiterates its concern that the State party has not yet established a definition of poverty, nor a poverty threshold. The Committee is particularly concerned about the fact that social assistance provided to the poor and socially excluded - such as single parents, students and disabled pensioners - under the Federal Social Assistance Act is not commensurate with an adequate standard of living.

28. The Committee reiterates its concern about the rising number and plight of homeless persons in Germany, as mentioned in the Committee's concluding observations of 1998.

29. The Committee is concerned that several Länder have abandoned the principle of free higher education by requiring the payment of fees, which in some cases are allocated to cover administrative costs of the Länder, and not university expenditure.

E. Suggestions and recommendations

30. Given the limited functions and powers of the DIMR, the Committee recommends that the State party take steps either to extend the Institute's functions and powers, or to establish a separate national human rights institution with broad functions and powers, such as those indicated in paragraph 12. In the meantime, the Committee recommends that the DIMR,

39. The Committee recommends that the State party undertake measures to ensure that prisoners working for private companies do so after having expressed their prior consent.

40. The Committee reiterates its recommendation to the State party that it ensure that civil servants who do not provide essential services have the right to strike, in accordance with article 8 of the Covenant.

41. The Committee urges the State party to ensure that the reformed social security system, and the pension system under reform, take into account the situation and needs of disadvantaged and vulnerable groups in society. In particular, the Committee strongly urges the State party to address the problems and deficiencies emerging in the implementation of the long-term insurance scheme. The Committee requests the State party to provide detailed information on the results of the implementation of the reformed pension scheme in its next periodic report.

42. The Committee also urges the State party to adopt urgent measures to improve the situation of patients in nursing homes.

43. The Committee strongly recommends that the State party undertake training programmes for those dealing with victims of trafficking in persons to ensure that they are sensitized to the needs of the victims, to provide better protection and appropriate care, and to ensure that victims can claim redress before courts of law.

44. The Committee recommends that the State party increase the availability of child day care institutions, especially in the western Länder.

45. The Committee urges the State party to establish a poverty threshold for its territory, taking into account the parameters used in the State party's first poverty and prosperity report, as well as international definitions of poverty, including the one adopted in the Committee's statement on poverty. In particular, the Committee urges the State party to ensure that social assistance provided under the Federal Social Assistance Act is commensurate with an adequate standard of living.

46. The Committee also urges the State party to take effective measures, and to devise programmes, to examine the extent and causes of homelessness in Germany and to ensure an adequate standard of living for the homeless.

47. The Committee recommends that the State party's Federal Government introduce a reduction of tuition fees in the national framework legislation regulating higher education, with a view to abolishing them. The Committee requests the State party to provide detailed and updated information and comparative statistical data on the quality of tertiary education, such as class sizes, in its next periodic report. The Committee also requests the State party to provide up-to-date information in its next periodic report on the extent of human rights education in the German education system.

Document No. 307

CESCR, E/C.12/1/Add.81 (2002), Concluding observations, Slovakia, para. 27

UNITED NATIONS **E**

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COMMITTEE ON ECONOMIC, SOCIAL
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Twenty-ninth session
11-29 November 2002

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

SLOVAKIA

1. The Committee considered the initial report of Slovakia on the implementation of the Covenant (E/1990/5/Add.49) at its 30th, 31st and 32nd meetings, held on 12 and 13 November 2002 (see E/C.12/2002/SR.30-32), and adopted, at its 56th meeting, held on 29 November 2002, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was prepared generally in conformity with the Committee's guidelines.

3. The Committee notes with appreciation the comprehensive written and oral replies given by the State party, as well as the open and candid constructive dialogue with the delegation, which included a number of government officials with expertise on the subjects relevant to the provisions of the Covenant. The Committee also welcomes the willingness of the delegation to provide further information in writing concerning the questions that could not be answered during the dialogue.

27. The Committee recommends that the State party revise its legislation on the right to strike, in line with article 8 of the Covenant and the relevant Conventions of the International Labour Organization.

28. The Committee requests the State party to provide detailed information on the National Programme in Poverty Combating and Social Exclusion and on the Slovak Social Protection National Programme. The Committee urges the State party to fully integrate human rights, including economic, social and cultural rights, in its poverty-reduction strategies. In this regard, it draws the attention of the State party to the Committee's Statement on Poverty, adopted by the Committee on 4 May 2001.

29. The Committee calls upon the State party to enforce its legislation on domestic violence and to take appropriate preventive measures in order to give the required assistance to victims of domestic violence.

30. The Committee urges the State party to adopt effective measures, including through regional cooperation, to combat trafficking in women and to adopt preventive programmes to combat the sexual exploitation of women, adolescents and children.

31. The Committee calls upon the State party to adopt effective measures, including public awareness campaigns, to reduce tobacco smoking and alcohol consumption.

32. The Committee requests the State party to provide, in its second periodic report, information about the mentally ill, including the number of those hospitalized, the facilities available to them and the legal safeguards for the protection against abuse and neglect of patients.

33. The Committee urges the State party to intensify its efforts to increase the school attendance of Roma children, especially at the primary level, and to address the problem of dropouts among secondary school pupils. The Committee also recommends that the State party collect and develop data, disaggregated by gender and ethnic origin, as stated in the Committee's General Comment No. 13, paragraph 7, for inclusion in its next periodic report.

34. The Committee encourages the State party to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

35. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society and, in particular, among State officials and the judiciary and to inform the Committee, in its next periodic report, of all steps taken to implement them. It also encourages the State party to consult with non-governmental organizations and other members of civil society in the preparation of the report.

36. The Committee requests the State party to submit its second periodic report by 30 June 2007.

Document No. 308

CESCR, E/C.12/GC/23 (2016), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 1

United Nations E/C.12/GC/23

Economic and Social Council

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27 April 2016

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Committee on Economic, Social and Cultural Rights

General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction

1. The right of everyone to the enjoyment of just and favourable conditions of work is recognized in the International Covenant on Economic, Social and Cultural Rights and other international and regional human rights treaties,[1] as well as related international legal instruments, including conventions and recommendations of the International Labour Organization (ILO).[2] It is an important component of other labour rights enshrined in the

[1] See Universal Declaration of Human Rights, arts. 23 and 24; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 11; Convention on the Rights of the Child, art. 32; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25; Convention on the Rights of Persons with Disabilities, art. 27; European Social Charter (Revised), Part I, paras. 2, 3, 4, 7 and 8; and Part II, arts. 2, 3 and 4; Charter of Fundamental Rights of the European Union, arts. 14, 23, 31 and 32; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 7; and African Charter on Human and Peoples' Rights, art. 15. The wording of the provisions in the various treaties differs. The European instruments are broader in the protections offered, while the African Charter includes the narrower requirement of "equal pay for equal work".

[2] Although many ILO conventions relate directly and indirectly to just and favourable conditions of work, for the present general comment, the Committee has identified the following as relevant: Hours of Work (Industry) Convention, 1919 (No. 1); Weekly Rest (Industry) Convention, 1921 (No. 14); Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47); Protection of Wages Convention, 1949 (No. 95); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Equal Remuneration Convention, 1951 (No. 100); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Wage Fixing Convention, 1970 (No. 131); Holidays with Pay Convention (Revised), 1970 (No. 132); Minimum Age Convention, 1973 (No. 138); Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153); Occupational Safety and Health Convention, 1981 (No. 155); Protocol of 2002 to the Occupational Safety and Health Convention, 1981; Workers with Family Responsibilities Convention, 1981 (No. 156); Night Work Convention, 1990 (No. 171); Part-Time Work Convention, 1994 (No. 175); Maternity Protection Convention, 2000 (No. 183);

GE.16-05357(E)

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Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work.[3] In turn, social security compensates for the lack of work-related income and complements labour rights.[4] The enjoyment of the right to just and favourable conditions of work is a prerequisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration.

2. The importance of the right to just and favourable conditions of work has yet to be fully realized. Almost 50 years after the adoption of the Covenant, the level of wages in many parts of the world remains low and the gender pay gap is a persistent and global problem. ILO estimates that annually some 330 million people are victims of accidents at work and that there are 2 million work-related fatalities.[5] Almost half of all countries still regulate weekly working hours above the 40-hour work week, with many establishing a 48-hour limit, and some countries have excessively high average working hours. In addition, workers in special economic, free trade and export processing zones are often denied the right to just and favourable conditions of work through non-enforcement of labour legislation.

3. Discrimination, inequality and a lack of assured rest and leisure conditions plague many of the world's workers. Economic, fiscal and political crises have led to austerity measures that claw back advances. The increasing complexity of work contracts, such as short-term and zero-hour contracts, and non-standard forms of employment, as well as an erosion of national and international labour standards, collective bargaining and working conditions, have resulted in insufficient protection of just and favourable conditions of work. Even in times of economic growth, many workers do not enjoy such conditions of work.

4. The Committee is aware that the concept of work and workers has evolved from the time of drafting of the Covenant to include new categories, such as self-employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers. Following up on general comment No. 18 on the right to work, and benefiting from its experience in the consideration of reports of States parties, the present general comment has been drafted by the Committee with the aim of contributing to the full implementation of article 7 of the Covenant.

Convention concerning the Promotional Framework for Occupational Safety and Health, 2006 (No. 187); and Domestic Workers Convention, 2011 (No. 189).

[3] Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, paragraph 2, indicates the interconnection between the right to work in a general sense in article 6 of the Covenant, the recognition of the individual dimension of the right to the enjoyment of just and favourable conditions of work in article 7 and the collective dimension in article 8.

[4] See Committee on Economic, Social and Cultural Rights general comment No. 19 (2007) on the right to social security, para. 2.

[5] According to ILO, the overall number of work-related fatal and non-fatal accidents and diseases globally did not vary significantly during the period 1998 to 2008, although the global figure hides variations among countries and regions.

Document No. 309

CESCR, E/C.12/DEU/CO/6 (2018), Concluding observations on the sixth periodic report of Germany, paras 44–45

United Nations E/C.12/DEU/CO/6

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27 November 2018

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Committee on Economic, Social and Cultural Rights

Concluding observations on the sixth periodic report of Germany*

1. The Committee on Economic, Social and Cultural Rights considered the sixth periodic report of Germany (E/C.12/DEU/6) at its 31st and 32nd meetings (see E/C.12/2018/SR.31 and 32), held on 25 September 2018, and adopted the present concluding observations at its 58th meeting, held on 12 October 2018.

A. Introduction

2. The Committee welcomes the sixth report submitted by the State party and the supplementary information provided in the replies to the list of issues (E/C.12/DEU/Q/6/Add.1). The Committee also appreciates the constructive dialogue held with the State party's high-level, interministerial delegation.

B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken to ensure a high level of protection of economic, social and cultural rights in the State party, in particular, the introduction of a national minimum wage in 2015 through the enactment of the Act on the National Minimum Wage (*Mindestlohngesetz*).

C. Principal subjects of concern and recommendations

Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

4. The Committee welcomes the statement of the delegation of the State party that the Government plans to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and it encourages the State party to expedite ratification.

State party's obligation in the context of the federal system

5. While noting that the federal system of the State party confers powers and responsibilities, particularly those relating to the realization of the rights covered by the Covenant, to the federal states (*Länder*), the Committee is concerned that the significant disparities in the enjoyment of economic, social and cultural rights, inherited from the division of Germany before 1990, continue to persist in spite of determined efforts by the State party to overcome them. The Committee is also concerned about insufficient

* Adopted by the Committee at its sixty-fourth session (24 September–12 October 2018).

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work. The Committee draws the attention of the State party to paragraph 47 (f) of its general comment No. 23 (2016) on the right to just and favourable conditions of work.

Right to strike of civil servants

44. The Committee remains concerned about the prohibition by the State party of strikes by all public servants with civil servant status, including schoolteachers with this status. This goes beyond the restrictions allowed under article 8 (2) of the Covenant, since not all civil servants can reasonably be deemed to be providers of an essential service (art. 8).

45. **The Committee reiterates its previous recommendation (E/C.12/DEU/CO/5, para. 20) that the State party take measures to revise the scope of the category of essential services with a view to ensuring that all those civil servants whose services cannot reasonably be deemed as essential are entitled to their right to strike in accordance with article 8 of the Covenant and with the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).**

Social security

46. The Committee is concerned that the level of the basic social benefits is not sufficient to allow recipients and their families to enjoy an adequate standard of living. It is also concerned at the calculation method of the subsistence level, which is based on a sample survey of the expenditure of the lowest-income households and excludes some basic costs. It is further concerned at the sanctions imposed on recipients of the basic social benefits (*Grundsicherung*) for jobseekers under Book II of the Social Code, which cut the benefits by 30 to 100 per cent and particularly affect young people, whose benefits are removed entirely if they are found to have breached their duties (*Pflichtverletzung*). It reiterates its concern at the definition of what is considered as "suitable" employment, which jobseekers are expected to accept (arts. 6, 9 and 11).

47. **The Committee recommends that the State party increase the level of the basic social benefits by improving the calculation methods of the subsistence level, in the light of the judgment of the Federal Constitutional Court of 23 July 2014. It urges the State party to review the sanctions regime in order to ensure that the subsistence minimum is always be applied. It also recommends that the State party expressly define criteria for assessing the suitability of employment, in line with article 21 (2) of the ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168). The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.**

Care services for older persons

48. While welcoming the decision to create 13,000 new caregiver positions in hospitals, the Committee is concerned at the chronic shortage of qualified caregivers for older persons in the State party. It reiterates its concern at the situation of older persons living in degrading conditions, including in some nursing homes, and who receive inadequate care owing to a shortage of qualified caregivers (arts. 11 and 12).

49. **The Committee recommends that the State party intensify its efforts to secure a sufficient number of qualified caregivers for older persons, in accordance with the World Health Organization Global Code of Practice on the International Recruitment of Health Personnel, and ensure that such caregivers enjoy just and favourable conditions of work. It reiterates its previous recommendations (E/C.12/DEU/CO/5, para. 27) that the State party take immediate steps to improve the situation of older persons in nursing homes, allocate the necessary resources to training nursing care personnel and conduct more frequent and thorough inspections of nursing homes. The Committee draws the attention of the State party to its general comment No. 6 (1995) on the economic, social and cultural rights of older persons.**

Document No. 310

CESCR, E/C.12/MEX/CO/5-6 (2018), Concluding observations on the combined fifth and sixth periodic reports of Mexico, paras 35–36

United Nations E/C.12/MEX/CO/5-6

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Committee on Economic, Social and Cultural Rights

Concluding observations on the combined fifth and sixth periodic reports of Mexico*

1. The Committee considered the combined fifth and sixth periodic reports of Mexico (E/C.12/MEX/5-6) at its 2nd and 3rd meetings (see E/C.12/2018/SR.2 and E/C.12/2018/SR.3), held on 12 and 13 March 2018. At its 28th meeting, held on 29 March 2018, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined fifth and sixth periodic reports of Mexico and the written replies to the list of issues (E/C.12/MEX/Q/5-6/Add.1), which were supplemented by the delegation's oral replies. The Committee appreciates the frank and constructive dialogue held with the high-level delegation of the State party. The Committee is also grateful to the State party for having forwarded the additional information that was offered during the dialogue.

B. Positive aspects

3. The Committee welcomes the measures taken to promote the enjoyment of economic, social and cultural rights, in particular the constitutional reform of 2011 whereby the constitutional status of these rights was recognized. The Committee also welcomes the implementation of the National Crusade against Hunger since 2013, the National Development Plan 2013–2018 and the National Human Rights Programme 2014–2018.

4. The Committee welcomes the active participation of the National Human Rights Commission and Mexican civil society organizations in the consideration of reports through their submission of written and oral information to the Committee.

C. Principal subjects of concern and recommendations

The justiciability of economic, social and cultural rights

5. Although the Committee notes that the rights set out in the Covenant can be invoked before the courts and applied in judicial decisions, it is concerned at the fact that, in practice, victims of violations of economic, social and cultural rights have difficulty in accessing effective judicial remedies, including the remedy of *amparo*. In addition, it is concerned at the lack of effective enforcement of the judgments handed down in *amparo* proceedings in which violations of economic, social and cultural rights have been found.

* Adopted by the Committee at its sixty-third session (12–29 March 2018).

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Informal economy

30. The Committee is concerned that approximately 57 per cent of workers are employed in the informal economy and are thus not properly covered by labour laws or the social protection system (arts. 6, 7 and 9).

31. **The Committee recommends that the State party redouble its efforts to progressively lower the number of workers in the informal sector of the economy, to bring those workers into the formal sector and to ensure that they are covered by labour laws and have access to social protection. In addition, it recommends that the State party systematically include the informal sector of the economy in the activities of the labour inspection and occupational health and safety services. The Committee draws the State party's attention to its general comments No. 18 (2005) on the right to work, No. 19 (2009) on the right to social security and No. 23 (2016) on the right to just and favourable conditions of work, as well as its statement of 2015 on "Social protection floors: an essential element of the right to social security and of the sustainable development goals" (E/C.12/2015/1).**

Working conditions of agricultural and domestic workers

32. The Committee is concerned that, despite the efforts made, working conditions in the agricultural and domestic sectors remain substandard and many workers in these sectors continue to earn low wages, have little job security and be exposed to unsafe and unhealthy working conditions and the risk of exploitation and abuse (art. 7).

33. **The Committee recommends that the State party:**

(a) **Redouble its efforts to ensure that all agricultural and domestic workers are provided in law and in practice with fair and satisfactory working conditions, including pay that provides them with a decent standard of living for themselves and their families;**

(b) **Ensure that the labour inspection mechanism has an appropriate mandate and the necessary human, technical and financial resources to effectively supervise employment conditions in all sectors, including domestic service, and that it incorporates an appropriate mechanism for the effective enforcement of the measures it takes and the sanctions it imposes;**

(c) **Establish effective complaint mechanisms for reporting abuse or exploitation, taking into account the situation in which many domestic and agricultural workers find themselves;**

(d) **Consider ratifying the ILO Domestic Workers Convention, 2011 (No. 189).**

34. **The Committee again draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Trade union rights

35. While the Committee takes note of the legislative and constitutional reforms relating to employment that were adopted in February 2017 with a view to enhancing the protection of trade union rights, it is concerned by reports of restrictions that, in practice, may affect the exercise of these rights, such as the right to strike and collective bargaining. In addition, it is concerned by allegations of the commission of acts of violence against trade union leaders (art. 8).

36. **The Committee recommends that the State party adopt effective measures to eliminate, in practice, restrictions that hinder the effective exercise of trade union rights by all workers, in accordance with article 8 of the Covenant and with the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In addition, it urges the State party to establish effective mechanisms for the protection of union rights, including by carrying out effective investigations into all**

complaints brought to its attention and paying adequate compensation to the workers concerned.

Social security

37. The Committee is concerned that the State party's social protection system is sectorally fragmented and closely linked to formal employment, which means that a significant number of persons, such as informal workers, self-employed workers and persons, especially women, who do unpaid domestic and care work, are not covered by the social protection system (art. 9).

38. **The Committee recommends that the State party continue making efforts to develop a social security system that guarantees universal social protection coverage and provides appropriate benefits for all persons, especially those belonging to the most disadvantaged and marginalized groups, with a view to ensuring that they have a decent standard of living. In addition, it urges the State party to strengthen its efforts to develop a social protection floor that includes basic universal social guarantees. The Committee draws the State party's attention to its general comment No. 19 (2008) on the right to social security and its statement of 2015 on "Social protection floors: an essential element of the right to social security and of the sustainable development goals".**

Violence against women

39. The Committee is concerned at the persistent violence against women that exists in all spheres, including in the home. It is especially concerned at the large number of femicides and high rates of impunity (arts. 3 and 10).

40. **The Committee urges the State party to:**

(a) **Thoroughly investigate all cases of femicide and violence against women and ensure that the perpetrators are prosecuted and duly punished;**

(b) **Strengthen existing mechanisms to prevent violence against women, including through information campaigns to raise public awareness of the seriousness and negative effects of such violence;**

(c) **Provide training to law enforcement officials and judges to educate them about the seriousness and criminal nature of violence against women in all spheres, including in the home;**

(d) **Step up its efforts to provide adequate protection to all women victims of violence by ensuring that they have access to justice through effective remedies, including means of obtaining reparation and compensation, and suitable access to shelters where they can receive immediate physical protection, legal advice and physical and mental health care.**

Children and adolescents in situations of vulnerability

41. The Committee takes note with concern of the information it has received about the vulnerable situation of many children and adolescents, particularly street children, in the State party. It is also concerned that a significant number of children under the age of 14 are engaged in child labour (art. 10).

42. **The Committee recommends that the State party:**

(a) **Establish a comprehensive protection system for children and adolescents who are in situations of particular vulnerability, especially street children, with a view to ensuring their reintegration into society and ensuring that families receive appropriate support to raise and educate their children;**

(b) **Intensify its efforts to prevent and combat the economic exploitation of children by ensuring that legal provisions on child labour are vigorously enforced and strengthening child labour inspection mechanisms;**

Document No. 311

CESCR, E/C.12/ESP/CO/6 (2018), Concluding observations on the sixth periodic report of Spain, paras 28–29

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25 April 2018
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Committee on Economic, Social and Cultural Rights

Concluding observations on the sixth periodic report of Spain*

1. The Committee considered the sixth periodic report of Spain (E/C.12/ESP/6) at its 16th and 17th meetings (see E/C.12/2018/SR.16 and 17), held on 21 and 22 March 2018, and adopted the present concluding observations at its 28th meeting, held on 29 March 2018.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Spain through the simplified reporting procedure in response to the list of issues prior to reporting prepared under that procedure (E/C.12/ESP/Q/6). The Committee thanks the State party for having accepted the simplified reporting procedure, as this procedure helps to improve cooperation and better focus the dialogue between the State party and the Committee. It furthermore expresses its appreciation for the open and constructive dialogue held with the multisectoral delegation of the State party and thanks the delegation for its oral replies and for the supplementary information provided during the dialogue.

B. Positive aspects

3. The Committee acknowledges the profound impact that the international financial crisis has had on the economy and on the effective enjoyment of economic, social and cultural rights in the State party. In this context, the Committee welcomes the fact that the economic recession has been overcome and that the State party has adopted measures and policies that demonstrate its commitment to economic, social and cultural rights, including the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the adoption of the National Plan of Action for Social Inclusion 2013–2016, the National Strategy for the Social Inclusion of the *Gitano* Population 2012–2020, the Comprehensive National Strategy for Homeless Persons 2015–2020 and the National Plan of Action on Business and Human Rights.

4. The Committee welcomes the active role played by Spanish civil society organizations in the process relating to the consideration of the State party's sixth periodic report.

* Adopted by the Committee at is sixty-third session (12–19 March 2018).

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(c) **Strengthen the labour inspection system so that all regions of the State party have the material and human resources required to monitor working conditions effectively.**

27. **The Committee refers the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Trade union rights

28. The Committee is concerned that the changes made during the 2012 labour reform could negatively influence enjoyment of the right to bargain collectively. It is also concerned by information it has received about the over-zealous application of article 315 (3) of the Criminal Code, which has resulted in the criminal prosecution of workers who have participated in strikes (art. 8).

29. **The Committee recommends that the State party ensure the effectiveness of collective bargaining and of the right to union representation, both in law and in practice, in conformity with article 8 of the Covenant and with the provisions of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It also urges the State party to consider the further revision or derogation of article 315 (3) of the Criminal Code in order to prevent the criminal prosecution of workers who have participated in strikes.**

Social security

30. The Committee is concerned at the persistent deficit shown by the pension system, at the low percentage of persons eligible for non-contributory benefits and at the fact that the level of both contributory and non-contributory benefits is insufficient to ensure that all pensioners and their dependants are guaranteed an adequate standard of living (art. 9).

31. **Based on its previous recommendation (E/C.12/ESP/CO/5, para. 20), the Committee calls on the State party to:**

(a) **Take the necessary measures, with the participation of all social stakeholders, in particular the trade unions, to eliminate the deficit shown by the pension system, in order to ensure the system's sustainability;**

(b) **Step up its efforts to ensure that everyone is covered by the social security system, including the most disadvantaged or marginalized persons and groups;**

(c) **Re-establish the correlation between social security benefits and the cost of living so as to guarantee beneficiaries and their families an adequate standard of living. To that end, the State party is encouraged to establish an effective and transparent indexation system.**

32. **The Committee draws the attention of the State party to its general comment No. 19 (2008) on the right to social security.**

Poverty

33. The Committee notes with concern that, for a country with the State party's level of development, the percentage of the population at risk of poverty and social exclusion is high, particularly among certain groups, such as young people, women, the least educated and migrants. The Committee is also concerned that this percentage is higher in certain autonomous communities and that children are most at risk of falling into poverty (art. 11).

34. **The Committee recommends that the State party accelerate the preparation and adoption of the National Strategy to Prevent and Combat Poverty and Social Exclusion 2018–2020, ensuring that it focuses on the individuals and groups most affected, such as children, and is implemented in accordance with a human rights-based approach. It also recommends that the State party allocate sufficient resources to its implementation, taking into account the disparities between the autonomous communities. The Committee draws the attention of the State party to its 2001**

Document No. 312

CESCR, E/C.12/EST/CO/3 (2019), Concluding observations on the third periodic report of Estonia, paras 26–27

United Nations E/C.12/EST/CO/3

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Committee on Economic, Social and Cultural Rights

Concluding observations on the third periodic report of Estonia*

1. The Committee considered the third periodic report of Estonia (E/C.12/EST/3) at its 4th and 5th meetings (see E/C.12/2019/SR.4 and 5) held on 19 and 20 February 2019, and adopted the present concluding observations at its 30th meeting, held on 8 March 2019.

A. Introduction

2. The Committee welcomes the submission of the third periodic report by the State party as well as the supplementary information provided in the replies to the list of issues (E/C.12/EST/Q/3/Add.1). The Committee appreciates the constructive dialogue held with the State party's interministerial delegation.

B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken by the State party to enhance the level of protection of economic, social and cultural rights in the State party, as referred to in the present concluding observations. It notes, in particular, the significant increase in the minimum wage during the reporting period and the adoption of the Welfare Development Plan for 2016–2023.

C. Principal subjects of concern and recommendations

Applicability of the Covenant

4. The Committee notes that some Covenant rights are protected in the Constitution, and that article 123 of the Constitution establishes the primacy of international treaties over domestic law. However, the Committee is concerned at the lack of information on judicial remedies and of examples of cases where Covenant rights are protected by domestic courts.

5. **The Committee recommends that the State party:**

(a) **Incorporate all the rights enshrined in the Covenant in the domestic legal order;**

(b) **Strengthen judicial remedies for the protection of Covenant rights in its domestic legal order;**

(c) **Enhance training for judges and lawyers on the Covenant;**

* Adopted by the Committee at its sixty-fifth session (18 February–8 March 2019).

(b) **Prevent and mitigate the risk of occupational accidents and diseases;**

(c) **Strengthen the capacity of the Labour Inspectorate to monitor working conditions, including by increasing its financial and human resources;**

(d) **Establish an occupational health safety insurance scheme.**

Trade union rights

26. Despite the explanation given by the delegation, the Committee remains concerned that article 59 of the Civil Service Act does not allow civil servants to exercise their right to strike or to take part in other collective pressure actions that interfere with the performance of functions of the recruiting authority or of other authorities, as set out in the Act (art. 8).

27. **The Committee recommends that the State party review the Civil Service Act with a view to allowing civil servants who do not provide essential services to exercise their right to strike in accordance with article 8 of the Covenant and with the International Labour Organization Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).**

Old age pension

28. The Committee is concerned that the level of the State pension insurance (pillar I of the old age pension scheme), which is below the at-risk-of-poverty line, is not sufficient to ensure beneficiaries an adequate standard of living. It is also concerned that this has contributed to the high relative poverty rate (47.5 per cent) for persons over 65 years of age. It is further concerned that the mandatory funded pension scheme (pillar II) does not cover the self-employed and that its coverage among those born between 1942 and 1982 is only 62 per cent (art. 9).

29. **The Committee recommends that the State party ensure that the level of State pension insurance benefits is sufficient to provide beneficiaries, particularly those who are living alone, with an adequate standard of living and to reduce the prevalence of pensioners at risk of poverty. It also recommends that the State party extend the coverage of the mandatory funded pension scheme to the self-employed and reopen the opportunity for those who were born between 1942 and 1982 to enrol in the pension scheme. In this context, the Committee draws the attention of the State party to its general comment No. 19 (2008) on the right to social security.**

Unemployment benefits

30. The Committee reiterates its concern that the unemployment insurance benefit is not paid in cases where the employment contract has been terminated due to professional fault. The Committee is also concerned at the low coverage of the unemployment insurance benefit and the unemployment allowance schemes, and the insufficient level of these benefits to ensure an adequate standard of living to the beneficiaries (art. 9).

31. **The Committee reiterates its previous recommendation that the State party rescind the condition imposed on the payment of unemployment benefits, as regards the reason for the termination of the employment contract. It also recommends that the State party ensure that unemployment benefits cover all workers, including the self-employed and workers in the informal economy, and that the level of those benefits is sufficient to provide the beneficiaries with an adequate standard of living.**

Minimum age of marriage

32. While noting that the number of child marriages is minimal, the Committee remains concerned that, according to the Family Law, children aged 15 years and older can, in exceptional cases, be allowed to marry by the courts.

33. **The Committee recommends that the State party revise its legislation in order to make it clear that the minimum age for marriage is 18 years for both girls and boys and that it take all measures to eliminate child marriage.**

Document No. 313

CESCR, E/C.12/UZB/CO/3 (2022), Concluding observations on the third periodic report of Uzbekistan, paras 36–37

United Nations E/C.12/UZB/CO/3*

Economic and Social Council

Distr.: General
31 March 2022

Original: English

Committee on Economic, Social and Cultural Rights

Concluding observations on the third periodic report of Uzbekistan**

1. The Committee considered the third periodic report of Uzbekistan[1] at its 13th, 15th and 17th meetings,[2] held on 22, 23 and 24 February 2022, and adopted the present concluding observations at its 30th meeting, held on 4 March 2022.

A. Introduction

2. The Committee welcomes the submission by the State party of the third periodic report and the supplementary information provided in the replies to the list of issues.[3] The Committee appreciates the constructive dialogue with the State party's high-level interministerial delegation.

B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken by the State party to enhance the realization of economic, social and cultural rights, as referred to in the present concluding observations. In particular, the Committee welcomes the adoption of the Act on Combating Corruption (No. LRU-419 of 3 January 2017) and the establishment of the Anti-Corruption Agency.

C. Principal subjects of concern and recommendations

Domestic application of the Covenant

4. While noting that the Covenant forms an integral part of the national legal framework according to the Constitution and that courts are competent to refer to the Covenant, the Committee remains concerned that provisions of the Covenant are rarely invoked in courts (art. 2 (1)).

5. **The Committee recommends the State party to raise public awareness about the Covenant and provide capacity-building programmes for judges, prosecutors and lawyers, to allow them to invoke and apply economic, social and cultural rights in domestic courts. The Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.**

* Reissued for technical reasons on 21 April 2022.

** Adopted by the Committee at its seventy-first session (14 February–4 March 2022).

[1] E/C.12/UZB/3.

[2] See E/C.12/2022/SR.13, E/C.12/2022/SR.15 and E/C.12/2022/SR.17.

[3] E/C.12/UZB/RQ/3.

Right to just and favourable conditions of work

30. The Committee notes the information on the annual review of the minimum wage and its increase in the last five years, following the legislative reform. However, the Committee is concerned that the minimum wage remains insufficient to ensure a decent living for workers and their families. The Committee regrets the lack of information on the criteria of the review process to determine the level of the minimum wage. It is also concerned about the lack of information on the mandate of the State Labour Inspectorate to enforce the minimum wage and carry out inspections in the informal economy (art. 7).

31. **The Committee recommends that the State party ensure the participation of social partners in the annual periodic review of the minimum wage, and index it to the cost of living, thereby ensuring that it enables workers and their families to enjoy a decent living. It also recommends setting up enforcement mechanisms for the payment of the minimum wage, especially for the informal sector, and ensuring safe and accessible channels of complaint. It recommends strengthening the State Labour Inspectorate to enforce the minimum wage and carry out inspections in the informal economy. The Committee draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Youth unemployment

32. The Committee is concerned about the high rate of young people, particularly young women, who are not in employment, education or training after secondary education (arts. 3 and 6).

33. **The Committee recommends that the State party strengthen its efforts to reduce the number of young people who are not in employment, education or training, also by increasing technical and vocational training opportunities tailored to the labour market, with a special focus on women.**

Trade union rights

34. The Committee notes the information on the adoption of the Act on Trade Unions (No. ZRU-588 of 6 December 2019). However, the Committee is concerned that trade unions are required to obtain approval from the Ministry of Justice for registration. It is also concerned that there has been no increase in the number of registered trade unions since 2016, and about the low participation level among employees from the public and private sectors in trade unions (art. 8).

35. **The Committee recommends that the State party strengthen its measures to ensure the right of employees to establish trade unions of their own choosing, by eliminating the requirement of prior authorization by the Ministry of the Justice and removing the administrative obstacles to the formation of trade unions. It also recommends expediting the adoption of the Bill on Rallies, Meetings and Demonstrations, with the effective and meaningful participation of trade unions and relevant stakeholders, while guaranteeing that trade unions can exercise their rights and activities freely and without undue restrictions and intimidation. The Committee draws the State party's attention to its general comment No. 18 (2005) on the right to work, and refers the State party to its joint statement with the Human Rights Committee on freedom of association, including the right to form and join trade unions,[7] adopted in 2019.**

Right to strike

36. The Committee is concerned about the lack of regulatory framework on the right to strike in the State party (art. 8).

[7] E/C.12/66/5-CCPR/C/127/4.

37. **The Committee recommends the State party to accelerate the adoption of the amendments to the Labour Act and to ensure the introduction of the right to strike in accordance with international standards.**

Right to social security

38. The Committee notes the information from the State party on the adoption of the National Strategy for Social Protection (2021–2030) and the implementation of the first stage of the compulsory health insurance system. The Committee is concerned, however, about the lack of coordination among governmental entities regarding different social protection measures and the inadequate level of social benefits and their unavailability to all relevant population groups (arts. 9 and 12).

39. **The Committee recommends that the State party effectively implement its National Strategy for Social Protection, including by establishing a clear coordination and administrative mechanism, with a view to covering all segments of the population, particularly those in the informal sector, and that it accelerate the roll-out of the compulsory health insurance. It also recommends ensuring an appropriate level of social protection benefits for persons with disabilities, older persons, Roma/Lyuli, refugees and asylum seekers, and conducting periodic recalculations of social allowances. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security, and to its statement, adopted in 2015, entitled "Social protection floors: an essential element of the right to social security and of the Sustainable Development Goals".**[8]

Protection of the family and children

40. The Committee notes the information from the State party on the preparation of the Bill on Domestic Violence and the Bill on Social Protection of Orphans and Children Deprived of Parental Care, as well as on the implementation of the deinstitutionalization policy for children. However, the Committee is concerned about the inadequate level of family-based and alternative care support for children, particularly for children belonging to disadvantaged and marginalized groups. The Committee is also concerned about the lack of systematic data collection on the situation of children belonging to disadvantaged and marginalized groups (arts. 9 and 10).

41. **The Committee recommends that the State party:**

(a) **Accelerate the adoption of the Bill on Domestic Violence to criminalize all forms of domestic violence, including marital rape, and ensure its effective implementation, with a view to protecting all victims, bringing perpetrators to justice and preventing impunity;**

(b) **Accelerate the adoption of the Bill on Social Protection of Orphans and Children Deprived of Parental Care and intensify its efforts to strengthen family-based and alternative care support for children, particularly children with disabilities, while ensuring the effective implementation of its deinstitutionalization policy;**

(c) **Ensure the systematic collection of statistics on children belonging to disadvantaged and marginalized groups.**

Forced evictions

42. The Committee notes the information provided by the State party on measures adopted relating to property and land deprivation. However, the Committee regrets the reports about the expropriation of property, the demolition of houses and forced eviction in the light of urban development projects. It is also concerned about reports of non-compliance with the national legal framework on property deprivation, especially about the absence of prior consultation with the residents affected and the lack or inadequacy of compensation and alternative housing (art. 11).

[8] E/C.12/2015/1.

Document No. 314

Joint statement by the Committee on Economic, Social, and Cultural Rights and the Human Rights Committee, E/C.12/66/5-CCPR/C/127/4 (2019)

United Nations E/C.12/66/5-CCPR/C/127/4

Economic and Social Council

International Covenant on Civil and Political Rights

Distr.: General
6 December 2019

Original: English

Committee on Economic, Social and Cultural Rights **Human Rights Committee**

Statement on freedom of association, including the right to form and join trade unions

Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee*

1. On the occasion of the 100th anniversary of the International Labour Organization (ILO), the Committee on Economic, Social and Cultural Rights and the Human Rights Committee decided to issue the present joint statement on the basic principles of freedom of association common to both Covenants, in particular in relation to trade union rights, as also protected under the Universal Declaration of Human Rights and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee on Economic, Social and Cultural Rights and the Human Rights Committee welcome the progress made by States to guarantee freedom of association in labour relations. At the same time, the two Committees note the challenges faced in the effective protection of this fundamental freedom, including undue restrictions on the right of individuals to form and join trade unions, the right of unions to function freely, and the right to strike.

2. Under article 8 of the International Covenant on Economic, Social and Cultural Rights, States parties undertake to ensure the right of everyone to form trade unions and join the trade union of their choice for the promotion and protection of their economic and social interests. Article 22 of the International Covenant on Civil and Political Rights guarantees the right of everyone to freedom of association with others, including the right to form and join trade unions for the protection of their interests. While the respective provisions are not identical, there is an important commonality between them, reflecting the fact that the right of each individual to freely associate with others, including the right to form and join trade unions, is at the intersection between civil and political rights and economic, social and cultural rights. The exercise of this right, moreover, may be seen both as closely linked to the freedoms of opinion and expression and the right of peaceful assembly, protected under articles 19 and 21 of the International Covenant on Civil and Political Rights, and as instrumental for the protection of workers' rights, including their rights to work and to just and favourable conditions of work, protected under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

3. Freedom of association includes the right of individuals, without distinction, to form and join trade unions for the protection of their interests. The right to form and join trade unions requires that trade unionists be protected from any discrimination, harassment, intimidation or reprisals. The right to form and join trade unions also implies that trade

* Adopted by the Committee on Economic, Social and Cultural Rights at its sixty-sixth session (30 September–18 October 2019) and by the Human Rights Committee at its 127th session (14 October–8 November 2019).

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unions should be allowed to operate freely, without excessive restrictions on their functioning.

4. Freedom of association, along with the right of peaceful assembly, also informs the right of individuals to participate in decision-making within their workplaces and communities in order to achieve the protection of their interests. The Committees recall that the right to strike is the corollary to the effective exercise of the freedom to form and join trade unions. Both Committees have sought to protect the right to strike in their review of the implementation by States parties of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Document No. 315

Report on Rights to freedom of peaceful assembly and of association, A/71/385 (2016), paras 54, 56 and 99(i)

United Nations A/71/385

General Assembly

Distr.: General
14 September 2016

Original: English

Seventy-first session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights to freedom of peaceful assembly and of association**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted in accordance with Human Rights Council resolution 24/5.

* A/71/150.
** The present report was submitted after the deadline in order to reflect the most recent developments.

16-15867 (E) 260916

violating rights recognized by the Covenant, and are accountable for violations of those rights when the infringement occurs as a result of its failure to secure the right in domestic law and practice. The desire to maximize economic profit or create attractive investment climates does not lower the obligations and responsibilities of the State. The Covenant also obliges States to combat discrimination by private actors,[68] including in employment.[69]

52. The principle of non-discrimination applies to all rights, and States are obliged to ensure that traditionally disenfranchised groups are able to enjoy their rights to freedom of peaceful assembly and of association. Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women requires States to take positive measures to secure equal enjoyment of rights for women, including assembly and association rights. The Committee on Migrant Workers[70] requires States to encourage self-organization among migrant workers irrespective of their migration status, and to inform them about associations that can provide assistance.

53. The International Covenant on Economic, Social and Cultural Rights requires that States ensure that people can organize and join workers' associations that address their concerns, and that particular attention be given to domestic workers, rural women workers, women working in female-dominated industries and women working at home, who are often deprived of that right.[71]

54. Both trade unions and the right to strike are fundamental tools to achieving workers' rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. The State is obligated to protect these rights for all workers.

55. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both explicitly protect the right to form and join trade unions. International human rights law also imposes upon States a duty to actively promote, encourage and facilitate the enjoyment of fundamental rights, including labour rights (A/70/266, para. 4). Further, the notion that States should promote trade unionism among workers is implicit in the International Covenant on Economic, Social and Cultural Rights. States must take measures to ensure that third parties do not interfere with union rights.

[68] Ibid., arts. 2 and 26.

[69] Human Rights Committee, *Franz Nahlik v. Austria*, decision on communication No. 608/1995, 22 July 1996 (CCPR/C/57/D/608/1995).

[70] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2, 28 August 2013 (CMW/C/GC/2).

[71] See Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work (E/C.12/GC/23).

56. The right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at least 90 countries.[72] The right to strike has, in fact, become customary international law.[73]

1. Instruments of the International Labour Organization

57. ILO, as the only global tripartite institution, plays a unique role in setting standards on fundamental principles and rights at work. Core ILO labour conventions include the Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), which calls on States to prevent discrimination against trade unions, protect employers' and workers' organizations against mutual interference and promote collective bargaining; and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), which protects workers who are exercising their right to organize, upholds the principle of non-interference between workers' and employers' organizations and promotes voluntary collective bargaining. These foundational rights are essential to the protection of other core labour rights. ILO signatory States are obliged to respect principles of freedom of association whether or not they have ratified the appropriate conventions.[74] The ILO Decent Work Agenda calls on countries to respect core conventions, provide for social protection, create decent jobs and engage in genuine social (tripartite) dialogue. Also of relevance, the ILO Domestic Workers Convention, 2011 (No. 189) sets standards for the effective promotion and protection of domestic workers' human rights.

2. States' obligations to respect, protect and fulfil the rights to freedom of peaceful assembly and association

Respect

58. States have the primary role in preventing or halting violations of workers' rights to freedom of peaceful assembly and of association, with clear obligations to protect, promote, facilitate and fulfil those rights, even in the global economy. Yet workers' ability to exercise their rights is in precipitous decline. Many States place obstacles, both in law and practice, that restrict workers' rights or fail to enforce

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[72] See, for example, Clarence Wilfred Jenks, *The International Protection of Trade Union Freedom*, The Library of World Affairs, No. 35 (New York, Frederick A. Praeger, 1957), pp. 561-562; Paul O'Higgins, "International standards and British labour law", in Roy Lewis, *Labour Law in Britain* (Oxford, United Kingdom, Oxfordshire, 1986), p. 577; Breen Creighton, "The ILO and protection of freedom of association in the United Kingdom", in Keith D. Ewing, Conor A. Gearty and Bob A. Hepple, eds., *Human Rights and Labour Law: Essays for Paul O'Higgins* (New York, Mansell,1994), p. 2; ILO*, International Labour Standards: A Workers' Education Manual*, 3rd rev. ed. (Geneva, 1990), p. 106.

[73] See, for example, ILO Convention No. 87 of 1948, arts. 3, 8 and 10; International Covenant on Economic, Social and Cultural Rights of 1966, art. 8; International Covenant on Civil and Political Rights of 1966, art. 22, European Convention on Human Rights of 1950, art. 11; American Convention on Human Rights of 1969, art. 16.

[74] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 1998). Available from www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.

or sector, immigration status or other limitations contrary to international law and standards;

(iv) **Ensure policy coherence through a review and revision of national laws and policies that may adversely impact the full exercise of the rights to freedom of assembly and association;**

(v) **Take appropriate measures, including affirmative measures, to ensure that workers in vulnerable situations have the ability to exercise effectively their assembly and association rights. Such measures should include:**

(a) **Improving guest worker programmes to, among other things, eliminate structural barriers, such as coercive conditions of work visas that provide the employer inordinate control over the lives of workers;**

(b) **Removing impediments to freedom of movement and access to justice (for example, provide temporary immigration status while rights violations are being investigated);**

(c) **Regulation of financial requirements that create debt and conditions for exploitation by third parties;**

(d) **Actively creating an enabling environment for workers to establish independent, voluntary associations, including trade unions;**

(vi) **Establish and adequately resource independent mechanisms to monitor the effective protection of assembly and association rights;**

(vii) **Prohibiting companies that fail to respect assembly and association rights from bidding on public contracts;**

(viii) **Ensuring the availability of effective judicial or other appropriate remedies for the violation of peaceful assembly and association rights that are available to all and are not subject to migration status;**

(ix) **Devoting particular attention to protecting and promoting the assembly and association rights of migrant workers, who by virtue of their immigration status may lack other mechanisms with which to advance their political, social and economic interests;**

(x) **Upholding the protection of workers' assembly and association rights in bilateral and multilateral trade and investment agreements, and consulting with civil society organizations, including trade unions, to the same extent as business entities in their engagement on such agreements;**

(xi) **Ensuring that non-State actors, particularly businesses, comply with international human rights norms and standards, and in particular the rights to freedom of peaceful assembly and of association. Regulation mechanisms should include due diligence processes, human rights impact assessments and mandatory disclosure regimes in respect of global supply chains.**

99. **The Special Rapporteur recommends that businesses (including employers, lead firms, subsidiaries, suppliers, franchisees or investors in supply chains):**

(i) **Meet their obligations to respect the rights to freedom of peaceful assembly and of association. That includes respecting the rights of all workers to form and join trade unions and labour associations and to engage in collective bargaining and other collective action, including the right to strike;**

(ii) **Refrain from anti-union policies and practices, and reprisals against workers who exercise their peaceful assembly and association rights;**

(iii) **Implement the Guiding Principles on Business and Human Rights by, among other things, making policy commitments to respect peaceful assembly and association rights and conducting due diligence in relation to human rights in respect of global supply chains.**

100. **The Special Rapporteur recommends that civil society, including trade unions:**

(i) **Create alliances across civil society to monitor the effective implementation of these recommendations;**

(ii) **Commit to the principle that labour rights are human rights, and recognize the urgent need for general human rights organizations to work on labour rights as a part of their core mandates, particularly in this era of weakening of workers' rights;**

(iii) **Trade unions specifically target outreach and advocacy at historically disenfranchised worker populations, including the full incorporation of domestic, migrant and informal workers into trade unions and bargain collective agreements;**

(iv) **Continue to advocate for equal opportunity to present their views in consultations with Governments and businesses on matters that affect workers' rights.**

101. **The Special Rapporteur recommends that the International Labour Organization:**

(i) **Pursue standard setting to ensure that workers in informal employment can enjoy the right to freedom of association and to bargain collectively;**

(ii) **Enhance policies and programmes to ensure that workers in vulnerable situations, including migrant workers, domestic workers, workers from minority groups and workers in the informal economy, can exercise their rights to freedom of peaceful assembly and of association;**

(iii) **Pursue standard setting to address governance gaps with regard to the protection of workers' assembly and association rights in global supply chains.**

102. **The Special Rapporteur recommends that the United Nations and multilateral financial institutions:**

(i) **In consultation with trade unions and worker organizations, ensure the promotion and protection of assembly and association rights in their policies and programmes, particularly with regard to policies related to**

Document No. 316

European Committee of Social Rights, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits (2012), para. 110

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON ADMISSIBILITY AND THE MERITS

Adoption: 3 July 2013

Notification: 19 July 2013

Publicity: 5 February 2014

Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO)

v. Sweden

Complaint No. 85/2012

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 265th Session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Jarna PETMAN
Alexandru ATHANASIU
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary

As to the improvement of the application of the EU Posting of Workers Directive

106. LO and TCO consider that the ongoing discussions within the EU regarding the above-mentioned improvement is, in the present context, “irrelevant” and that “a proposal being discussed within the EU does not address the issue of the right to take collective action [in Sweden]”.

B - Assessment of the Committee

107. Having regard to the preliminary observations on the merits of the complaint (paragraphs 72 to 74 above), the Committee considers that its task is not to judge the conformity to the Charter of the CJEU’s preliminary ruling in the Laval case, but rather to assess whether the legislative amendments adopted by the Swedish Parliament, in April 2010 (in the aftermath and as a consequence of the above-mentioned ruling) and in December 2009 (in order to implement the provisions of Directive 2006/123/EC) constitute a violation of the Charter.

108. In its assessment regarding the alleged violation of Article 6§§2 and 4, the Committee will refer in particular to: a) Sections 5a - 5b (SFS: 2012:857) and Sections 10 - 11 (SFS 2013:351) of the Foreign Posting of Employees Act (1999:678), Section 41c of the Co-determination Act (1976:580) and the Temporary Agency Work Act (2012:854); b) the changes made in Section 2 of the Foreign Branch Offices Act (2009:1083), Section 3 of the Foreign Branch Offices Ordinance (1992:308).

109. From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§§2 and 4 of the Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to just conditions of work (Article 2), safe and healthy working conditions (Article 3), fair remuneration (Article 4), information and consultation (Article 21), participation in the determination and improvement of the working conditions and working environment (Article 22), protection in cases of termination of employment (Article 24), protection of the workers’ claims in the event of the insolvency of their employer (Article 25), dignity at work (Article 26) workers’ representatives protection in the undertaking and facilities to be accorded to them (Article 28), information and consultation in collective redundancy procedures (Article 29).

110. In addition, the Committee notes that the right to collective bargaining and action receives constitutional recognition at national level in the vast majority of the Council of Europe’s member States, as well as in a significant number of binding legal instruments at the United Nations and EU level. In this respect, reference is made *inter alia* to Article 8 of the International Covenant on Economic, Social and Cultural Rights (see paragraph 37 above), the relevant provisions of the ILO conventions Nos. 87, 98 and 154 (see paragraph 38 above) as well as the EU Charter of Fundamental Rights, Directive 2006/123/EC on services in the internal market (cf. Article 1§7) and the Directive 2008/104/EC on temporary agency work - recital 19 (see paragraphs 36 above).

Document No. 317

ECtHR, Demir and Baykara v. Turkey (2008), paras 140–170

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

CASE OF DEMİR AND BAYKARA v. TURKEY

(Application no. 34503/97)

JUDGMENT

STRASBOURG

12 November 2008

3. Whether there was interference

(a) General principles concerning the substance of the right of association

(i) Evolution of case-law

140. The development of the Court's case-law concerning the constituent elements of the right of association can be summarised as follows: the Court has always considered that Article 11 of the Convention safeguards freedom to protect the occupational interests of trade-union members by the union's collective action, the conduct and development of which the Contracting States must both permit and make possible (see *National Union of Belgian Police*, cited above, § 39; *Swedish Engine Drivers' Union*, cited above, § 40; and *Schmidt and Dahlström v. Sweden*, 6 February 1976, § 36, Series A no. 21).

141. As to the substance of the right of association enshrined in Article 11 of the Convention, the Court has taken the view that § 1 of that Article affords members of a trade union a right, in order to protect their interests, that the trade union should be heard, but has left each State a free choice of the means to be used towards this end. What the Convention requires, in the Court's view, is that under national law trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members' interests (see *National Union of Belgian Police*, cited above, § 39; *Swedish Engine Drivers' Union*, cited above, § 40; and *Schmidt and Dahlström*, cited above, § 36).

142. As regards the right to enter into collective agreements, the Court initially considered that Article 11 did not secure any particular treatment of trade unions, such as a right for them to enter into collective agreements (see *Swedish Engine Drivers' Union*, cited above, § 39). It further stated that this right in no way constituted an element necessarily inherent in a right guaranteed by the Convention (see *Schmidt and Dahlström*, cited above, § 34).

143. Subsequently, in the case of *Wilson, National Union of Journalists and Others*, the Court considered that even if collective bargaining was not indispensable for the effective enjoyment of trade-union freedom, it might be one of the ways by which trade unions could be enabled to protect their members' interests. The union had to be free, in one way or another, to seek to persuade the employer to listen to what it had to say on behalf of its members (ibid., § 44).

144. As a result of the foregoing, the evolution of case-law as to the substance of the right of association enshrined in Article 11 is marked by two guiding principles: firstly, the Court takes into consideration the totality of the measures taken by the State concerned in order to secure trade-union freedom, subject to its margin of appreciation; secondly, the Court does not

accept restrictions that affect the essential elements of trade-union freedom, without which that freedom would become devoid of substance. These two principles are not contradictory but are correlated. This correlation implies that the Contracting State in question, while in principle being free to decide what measures it wishes to take in order to ensure compliance with Article 11, is under an obligation to take account of the elements regarded as essential by the Court's case-law.

145. From the Court's case-law as it stands, the following essential elements of the right of association can be established: the right to form and join a trade union (see, as a recent authority, *Tüm Haber Sen and Çınar*, cited above), the prohibition of closed-shop agreements (see, for example, *Sørensen and Rasmussen*, cited above) and the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members (see *Wilson, National Union of Journalists and Others*, cited above, § 44).

146. This list is not finite. On the contrary, it is subject to evolution depending on particular developments in labour relations. In this connection, it is appropriate to remember that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies. In other words, limitations to rights must be construed restrictively, in a manner which gives practical and effective protection to human rights (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 100, ECHR 2003-II, and *Selmouni v. France* [GC], no. 25803/94, § 101, ECHR 1999-V).

(ii) The right to bargain collectively

147. The Court observes that in international law, the right to bargain collectively is protected by ILO Convention No. 98 concerning the Right to Organise and to Bargain Collectively. Adopted in 1949, this text, which is one of the fundamental instruments concerning international labour standards, was ratified by Turkey in 1952. It states in Article 6 that it does not deal with the position of "public servants engaged in the administration of the State". However, the ILO Committee of Experts interpreted this provision as excluding only those officials whose activities were specific to the administration of the State. With that exception, all other persons employed by government, by public enterprises or by autonomous public institutions should benefit, according to the Committee, from the guarantees provided for in Convention No. 98 in the same manner as other employees, and consequently should be able to engage in collective bargaining in

respect of their conditions of employment, including wages (see paragraph 43 above).

148. The Court further notes that ILO Convention No. 151 (which was adopted in 1978, entered into force in 1981 and has been ratified by Turkey) on labour relations in the public service ("Convention No. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service") leaves States free to choose whether or not members of the armed forces or of the police should be accorded the right to take part in the determination of working conditions, but provides that this right applies everywhere else in the public service, if need be under specific conditions. In addition, the provisions of Convention No. 151, under its Article 1 § 1, cannot be used to reduce the extent of the guarantees provided for in Convention No. 98 (see paragraph 44 above).

149. As to European instruments, the Court finds that the European Social Charter, in its Article 6 § 2 (which Turkey has not ratified), affords to all workers, and to all trade unions, the right to bargain collectively, thus imposing on the public authorities the corresponding obligation to promote actively a culture of dialogue and negotiation in the economy, so as to ensure broad coverage for collective agreements. The Court observes, however, that this obligation does not oblige authorities to enter into collective agreements. According to the meaning attributed by the ECSR to Article 6 § 2 of the Charter, which in fact fully applies to public officials, States which impose restrictions on collective bargaining in the public sector have an obligation, in order to comply with this provision, to arrange for the involvement of staff representatives in the drafting of the applicable employment regulations.

150. As to the European Union's Charter of Fundamental Rights, which is one of the most recent European instruments, it provides in Article 28 that workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels.

151. As to the practice of European States, the Court reiterates that, in the vast majority of them, the right of civil servants to bargain collectively with the authorities has been recognised, subject to various exceptions so as to exclude certain areas regarded as sensitive or certain categories of civil servants who hold exclusive powers of the State. In particular, the right of public servants employed by local authorities and not holding State powers to engage in collective bargaining in order to determine their wages and working conditions has been recognised in the majority of Contracting States. The remaining exceptions can be justified only by particular circumstances (see paragraph 52 above).

152. It is also appropriate to take into account the evolution in the Turkish situation since the application was lodged. Following its ratification

of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, Turkey amended, in 1995, Article 53 of its Constitution by inserting a paragraph providing for the right of trade unions formed by public officials to take or defend court proceedings and to engage in collective bargaining with authorities. Later on, Law no. 4688 of 25 June 2001 laid down the terms governing the exercise by civil servants of their right to bargain collectively.

153. In the light of these developments, the Court considers that its case-law to the effect that the right to bargain collectively and to enter into collective agreements does not constitute an inherent element of Article 11 (see *Swedish Engine Drivers' Union*, cited above, § 39, and *Schmidt and Dahlström*, cited above, § 34) should be reconsidered, so as to take account of the perceptible evolution in such matters, in both international law and domestic legal systems. While it is in the interests of legal certainty, foreseeability and equality before the law that the Court should not depart, without good reason, from precedents established in previous cases, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (see *Vilho Eskelinen and Others*, cited above, § 56).

154. Consequently, the Court considers that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any "lawful restrictions" that may have to be imposed on "members of the administration of the State" within the meaning of Article 11 § 2 – a category to which the applicants in the present case do not, however, belong (see paragraphs 106-07 above).

(b) Application of the foregoing principles to the present case

155. In the light of the foregoing principles, the Court considers that the trade union Tüm Bel Sen, already at the material time, enjoyed the right to engage in collective bargaining with the employing authority, which had moreover not disputed that fact. This right constituted one of the inherent elements of the right to engage in trade-union activities, as secured to that union by Article 11 of the Convention.

156. As to the impugned collective agreement entered into after collective bargaining, the Grand Chamber, like the Chamber, takes note of the following facts:

"In the first place, the trade union Tüm Bel Sen persuaded the employer, Gaziantep Municipal Council, to engage in collective bargaining over questions that it regarded as important for the interests of its members and to reach an agreement in order to determine their reciprocal obligations and duties.

Subsequently, following those negotiations, a collective agreement was entered into between the employer and the union Tüm Bel Sen. All the rights and obligations of its members were provided for and protected under that agreement.

Moreover, the collective agreement was implemented. For a period of two years, with the exception of certain financial provisions that were in dispute between the parties, the collective agreement governed all employer-employee relations within Gaziantep Municipal Council."

157. Accordingly, the Court observes that the collective bargaining in the present case and the resulting collective agreement constituted, for the trade union concerned, an essential means to promote and secure the interests of its members. The absence of the legislation necessary to give effect to the provisions of the international labour conventions already ratified by Turkey, and the Court of Cassation judgment of 6 December 1995 based on that absence, with the resulting *de facto* annulment *ex tunc* of the collective agreement in question, constituted interference with the applicants' trade-union freedom as protected by Article 11 of the Convention.

158. As to the applicants' arguments concerning the insufficiency of the new legislation with regard to the trade-union rights of civil servants, the Court points out that the object of the present application does not extend to the fact that the new Turkish legislation fails to impose on the authorities an obligation to enter into collective agreements with civil servants' trade unions, or to the fact that those unions do not have the right to strike in the event that their collective bargaining should prove unsuccessful.

4. Whether the interference was justified

159. The Court considers that the interference in question, namely the annulment *ex tunc* of the collective agreement that the trade union Tüm Bel Sen had entered into following collective bargaining with the authority that employed the applicants, should be regarded as having breached Article 11, unless it can be shown that it was "prescribed by law", that it pursued one or more legitimate aims, in accordance with § 2, and that it was "necessary in a democratic society" to fulfil such aims.

(a) Prescription by law

160. The Government and the applicants agreed with the Chamber's finding that the interference in question was prescribed by law. For the purposes of the present case, the Grand Chamber can accept that the interference was prescribed by law, as interpreted by the combined civil

divisions of the Court of Cassation, the highest judicial body to have ruled on the case.

(b) Pursuit of a legitimate aim

161. The Court can also accept, like the Chamber and the parties themselves, that the interference in question, in so far as it aimed to prevent discrepancy between law and practice, pursued a legitimate aim: the prevention of disorder. As to the fact that the risk of such discrepancy was the result of the time taken by the legislature to adapt the legislation to Turkey's international commitments in the field of international labour standards, the Court considers that its assessment must likewise relate to the question whether such a measure was necessary in a democratic society.

(c) Necessity in a democratic society

162. The Court refers in this connection to the case-law set out above concerning the negative and positive obligations imposed on the Government by Article 11 of the Convention (see paragraphs 109-11 above).

163. As to the application of these principles to the present case, the Court notes that the Government have omitted to show how the impugned restriction was necessary in a democratic society, standing by their principal argument to the effect that the applicants, in their capacity as civil servants, did not have the right to bargain collectively or enter into collective agreements.

164. The Court, performing its own examination, considers that at the material time a number of elements showed that the refusal to accept that the applicants, as municipal civil servants, enjoyed the right to bargain collectively and thus to persuade the authority to enter into a collective agreement, did not correspond to a "pressing social need".

165. Firstly, the right for civil servants to be able, in principle, to bargain collectively, was recognised by international law instruments, both universal (see paragraphs 147-48 above) and regional (see paragraphs 149-50 above). Moreover, an examination of European practice shows that this right was recognised in the majority of member States (see paragraphs 52 and 151 above).

166. Secondly, Turkey had in 1952 ratified ILO Convention No. 98, the principal instrument protecting, internationally, the right for workers to bargain collectively and enter into collective agreements (see paragraphs 42-43 and 151 above). There is no evidence in the case file to show that the applicants' union represented "public servants engaged in the administration of the State", that is to say, according to the interpretation of the ILO Committee of Experts, officials whose activities are specific to the administration of the State and who qualify for the exception provided for in Article 6 of ILO Convention No. 98.

167. In these circumstances, the Grand Chamber shares the following consideration of the Chamber:

> "The Court cannot accept that the argument based on an omission in the law – caused by a delay on the part of the legislature – was sufficient in itself to make the annulment of a collective agreement which had been applied for the past two years satisfy the conditions for any restriction of the freedom of association."

168. Moreover, the Grand Chamber observes that the Government failed to adduce evidence of any specific circumstances that could have justified the exclusion of the applicants, as municipal civil servants, from the right, inherent in their trade-union freedom, to bargain collectively in order to enter into the agreement in question. The explanation that civil servants, without distinction, enjoy a privileged position in relation to other workers is not sufficient in this context.

169. The Court thus finds that the impugned interference, namely the annulment *ex tunc* of the collective agreement entered into by the applicants' union following collective bargaining with the authority was not "necessary in a democratic society", within the meaning of Article 11 § 2 of the Convention.

170. There has therefore been a violation of Article 11 of the Convention on this point also, in respect of both the applicants' trade union and the applicants themselves.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

171. The applicants argued that the restrictions imposed on their freedom to form trade unions and enter into collective agreements constituted a discriminatory distinction for the purposes of Article 14 of the Convention taken in conjunction with Article 11.

172. However, in view of its findings under Article 11, the Court, as did the Chamber, does not consider it necessary to examine this complaint separately.

Document No. 318

ECtHR, Enerji Yapi-Yol Sen v. Turkey (2009), paras 17–24

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF ENERJİ YAPI-YOL SEN v. TURKEY

(Application No. 68959/01)

JUDGMENT

STRASBOURG

April 21, 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

[Unofficial translation]

[…]

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

16. The relevant domestic and international law is described in *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 34-52, November 12, 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

17. The applicant considers that circular no. 1996/21 infringed his right to freedom of association. He invokes Article 11 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

18. The government fights this argument.

A. The existence of interference

19. At the outset, the Court recalls that in its admissibility decision of January 31, 2008, it joined the Government's preliminary objection concerning the applicant's lack of "victim" status with the merits of the case.

20. The claimant alleges that the contested circular, which prohibited civil servants from taking part in a national strike day as part of collective actions of meetings and demonstrations, amounted to an interference with the exercise of his right to freedom of association.

21. The Government takes the view that the applicant was in no way affected by the above-mentioned circular. It referred to the statutory provisions and maintained that the circular had not prevented the applicant from carrying out his lawful activities. It asserts that there has consequently been no interference with the exercise of the applicant's right to freedom of association within the meaning of Article 11 of the Convention.

22. The Court recalls that in order to be able to lodge an application under Article 34, a natural person, a non-governmental organization or a group of individuals must be able to claim to be "the victim of a violation (...) of the rights set forth in the Convention (...)". To be able to claim to be the victim of a violation, an individual must have directly suffered the effects of the

disputed measure (*Ireland v. the United Kingdom*, judgment of 18 January 1978, §§ 239-240, Series A no. 25; *Eckle v. Germany*, judgment of 15 July 1982, § 66, Series A no. 51; *Klass and others v. Germany*, judgment of 6 September 1978, § 33, Series A no. 28). Thus, the Convention does not contemplate the possibility of an *actio popularis for the* purposes of interpreting the rights recognized in the Convention; nor does it authorize individuals to complain about a provision of domestic law simply because it seems to them, without their having directly experienced its effects, that it violates the Convention (*Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142).

23. It is, however, open to an individual to argue that a law violates his or her rights, in the absence of an individual act of enforcement, if the person concerned is obliged to change his or her conduct on pain of prosecution (*Norris*, cited above; *Bowman v. United Kingdom*, no. 24839/94, *Reports of Judgments and Decisions* 1998-I) or if he or she belongs to a category of persons likely to suffer directly from the effects of the legislation (*Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33-35, 29 April 2008; *Johnston and Others v. Ireland*, judgment of 18 December 1986, Series A no. 112; *Open Door and Dublin Well Woman v. Ireland*, judgment of October 29, 1992, Series A no. 246-A).

24. In the present case, the Court considers, in the light of these principles, that the applicant trade union suffered directly from the effects of the disputed circular and that it can therefore claim to be the victim of interference with the exercise of its right to freedom of association. The Court observes that circular no. 1996/21 prohibited civil servants from taking part in a national strike day organized as part of the actions planned by the Federation of Public Sector Unions for the recognition of the right to a collective agreement for civil servants. Disciplinary measures were imposed on those who took part (see paragraph 9 above). What the Convention requires, however, is that legislation should enable trade unions, in a manner not contrary to Article 11, to strive to defend the interests of their members (*Schmidt and Dahlström v. Sweden*, 6 February 1976, §§ 34 and 36, Series A no. 21; *Syndicat national de la police belge v. Belgium*, October 27, 1975, § 39, Series A no. 19; *Syndicat suédois des conducteurs de locomotives v. Sweden*, February 6, 1976, § 40, Series A no. 20). Strike action, which enables a trade union to make its voice heard, is an important aspect for the members of a trade union in the protection of their interests (*Schmidt and Dahlström*, cited above, § 36). The Court also notes that the right to strike is recognized by the supervisory bodies of the International Labour Organization (ILO) as an intrinsic corollary of the right to organize protected by ILO Convention C87 on Freedom of Association and Protection of the Right to Organize (for the Court's consideration of elements of international law other than the Convention, see *Demir and Baykara*, supra). It points out that the European Social Charter also recognizes the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. The Court therefore rejects the Government's objection.

B. Justification for the interference

25. Such interference violates Article 11 of the Convention, unless it is "prescribed by law", pursues one or more legitimate aims under Article 11(2) of the Convention, and is "necessary in a democratic society" for the

achievement of those aims.

1. "Prescribed by law"

26. The Court recalls that the words "provided for by law" mean in the first place that the measure complained of must have a basis in domestic law, that it understands the term "law" in its substantive rather than formal sense, and that it has also included in it texts of "sub-legislative" rank enacted by the competent authorities by virtue of a delegated normative power (*Frérot v. France*, no. 70204/01, § 57, June 12, 2007; *Lavents v. Latvia*, no. 58442/00, § 135, November 28, 2002).

27. It considers that, in the present case, circular no. 1996/21, issued in the exercise of a normative power, constituted the legal basis for the disputed interference.

2. "Legitimate aim"

28. The Court doubts whether the interference in the present case pursued a legitimate aim within the meaning of Article 11 § 2 of the Convention. However, it considers it unnecessary to decide the question in view of the conclusion it has reached as to the necessity of such interference (paragraph 3 below) (*Urcan and others v. Turkey*, nos. 23018/04, 23034/04, 23042/04, 23071/04, 23073/04, 23081/04, 23086/04, 23091/04, 23094/04, 23444/04 and

23676/04, § 29, July 17, 2008).

3. "Necessary in a democratic society"

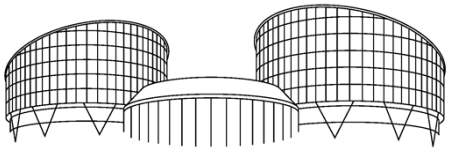
29. Referring to the judgments in *Syndicat national de la police belge*

c. Belgium (cited above) and *Schmidt and Dahlström* (cited above), the Government asserts that Article 11 of the Convention does not guarantee trade unions specific treatment by the State.

[…]

Document No. 319

ECtHR, National Union of Rail, Maritime and Transport Workers v. the United Kingdom (2014), paras 26–33, 75–78 and 83–106



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NATIONAL UNION OF RAIL, MARITIME AND TRANSPORT WORKERS v. THE UNITED KINGDOM

(Application no. 31045/10)

JUDGMENT

STRASBOURG

8 April 2014

FINAL

08/09/2014

This judgment has become final under Article 44 § 2 of the Convention.

the supply of goods or services between the employer in dispute and his supplier or customer during the dispute; and (iii) that it was likely to achieve that purpose.

24. The current rule was originally introduced by the Employment Act 1990, and then re-enacted in the 1992 Act in the terms set out above.

25. The parties provided statistical information on the number of days lost to industrial action in the United Kingdom, going back to the 1970s. The Government pointed out that in that decade, the average number of days lost each year was 12.9 million. This decreased in the 1980s to an average of 7.2 million days. From the early 1990s to the present day, the figure is much lower, standing at 700,000 days lost per year on average. They attributed part of this decline at least to the ban on secondary action. The applicant union disputed that interpretation. It noted that the available statistics did not distinguish between primary and secondary strikes. It was therefore impossible to identify the true extent of secondary action before 1980 and, consequently, impossible to ascertain the impact of the restrictions introduced in 1980 and 1990. In the applicant union's view, secondary action had been relatively rare, the overwhelming majority of strikes at that time had been primary strikes. It referred to official figures (contained in a Government publication, the "Employment Gazette") indicating that, since the 1960s, the United Kingdom was consistently close to the European average for days lost to industrial action. According to this source, the country had been middle-ranking since the end of the 1970s. The only exception was for 1984, on account of the long and widespread strike in the mining industry that year. The Government submitted that the comparative statistics needed to be interpreted with caution, given the profound transformation of Europe over the past twenty years. The fact that the United Kingdom remained close to the European average in this regard indicated that, contrary to the applicant union's point of view, the rules on industrial action were not so restrictive as to make it excessively difficult to organise strikes.

III. RELEVANT INTERNATIONAL LAW

26. In support of its application, the applicant union included references to other international legal instruments, and the interpretation given to them by the competent organs. The most relevant and detailed of these materials are referred to below.

A. International Labour Organization Conventions

27. While there is no provision in the Conventions adopted by the International Labour Organization (ILO) expressly conferring a right to strike, both the Committee on Freedom of Association and the Committee

of Experts on the Application of Conventions and Recommendations ("the Committee of Experts") have progressively developed a number of principles on the right to strike, based on Articles 3 and 10 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (summarised in "Giving globalization a human face", International Labour Office, 2012, § 117). This Convention was ratified by the United Kingdom on 27 June 1949.

1. Concerning notice requirements

28. The Committee of Experts has commented several times upon the notice requirements for industrial action in the United Kingdom. The applicant union referred to the following statement, adopted in 2008:

> "In its previous comments, the Committee had taken note of comments made by the TUC to the effect that the notice requirements for an industrial action to be protected by immunity were unjustifiably burdensome. The Committee notes that according to the Government, a number of measures have already been taken to simplify sections 226-235 of the TULRA and 104-109 of the 1995 Order; moreover, as part of a plan published in December 2006 to simplify aspects of employment law, the Government explicitly invited trade unions to come forward with their ideas to simplify trade union law further. Since then, the Government has held discussions with the TUC to examine their ideas to simplify aspects of the law on industrial action ballots and notices. These discussions are ongoing. The Committee notes that in its latest comments, the TUC notes that there has been no progress in this reform. **The Committee requests the Government to indicate in its next report progress made in this regard**."[1]

29. More recently, in a direct request to the Government of the United Kingdom, the Committee of Experts stated:

> "In its previous comments, the Committee had taken note of comments made by the Trade Union Congress (TUC) to the effect that the notice requirements for an industrial action to be protected by immunity were unjustifiably burdensome. The Committee requested the Government to continue to provide information on any developments, as well as any relevant statistics or reports on the practical application and effect of these requirements. The Committee notes the Government's indication that the Court of Appeal decision in RMT v. Serco and in ASLEF v. London Midland (2011) EWCA 226, overturned injunctions which had been obtained by Serco and London Midland Railway against the two main national transport unions, the RMT and ASLEF. In both cases, the injunctions had been obtained on the basis of the unions' breaches of statutory balloting and notification procedures. This case was the latest in a series of cases assessing the extent of unions' technical obligations to ensure that a fair balloting process had taken place. In the RMT v. Serco decision, the Court of Appeal issued some key clarification so that in future it is likely to be more difficult for employers to obtain injunctions to prevent strike action as a result of breaches of the balloting and notice requirements. A Court of Appeal decision is binding on all lower courts. Subsequent to this case, in Balfour Beatty v. Unite (2012) EWHC 267 (QB), the Court found against Balfour Beatty, taking account of the Serco case and the need to strike a balance between striving for democratic legitimacy and

1. Bold text used in the original.

imposing unrealistic burdens on unions and their officers. The Committee notes the TUC's observation that, while it greatly welcomes both decisions, it considers that they do not fully address the problems arising under the legislation that it has identified and that the legislation continues to impose intolerable demands on trade unions. **The Committee notes these developments with interest and requests the Government to provide its comments on the concerns raised by the TUC**."[2]

2. Concerning secondary action

30. The Committee of Experts has taken the following view (see "Giving globalization a human face", § 125):

"With regard to so-called 'sympathy' strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful."

31. The Committee on Freedom of Association also considers this form of industrial action to be protected by international labour law (see "Freedom of Association", *Digest of the decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition, International Labour Office, 2006):

"534. A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.

...

538. A ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association."

32. In its consideration of the United Kingdom's observance of Convention No. 87, the Committee of Experts has repeatedly criticised the fact that secondary strikes are illegal. The initial criticism was included in its 1989[3] observation concerning the United Kingdom:

"The Committee notes that the common law renders virtually all forms of strikes or other industrial action unlawful as a matter of civil law. This means that workers and unions who engage in such action are liable to be sued for damages by employers (or other parties) who suffer loss as a consequence, and (more importantly in practical terms) may be restrained from committing unlawful acts by means of injunctions (issued on both an interlocutory and a permanent basis). It appears to the Committee that unrestricted access to such remedies would deny workers the right to take strikes or other industrial action in order to protect and to promote their economic and social interests.

It is most important, therefore, that workers and unions should have some measure of protection against civil liability. There has been legislative recognition of this imperative since 1906 in the form of a series of 'immunities' (or, more accurately, 'protections') against tort action for trade unions and their members and officials. The

2. Bold text used in the original.
3. That is, at a time when secondary action was merely restricted and not yet banned.

current version of the 'immunities' is to be found in the Trade Union and Labour Relations Act 1974.

The scope of these protections has been narrowed in a number of respects since 1980. The Committee notes, for example, that section 15 of the 1974 Act has been amended so as to limit the right to picket to a worker's own place of work or, in the case of a trade union official, the place of work of the relevant membership, whilst section 17 of the 1980 Act removes protection from 'secondary action' in the sense of action directed against an employer who is not directly a party to a given trade dispute. In addition, the definition of 'trade dispute' in section 29 of the 1974 Act has been narrowed so as to encompass only disputes between workers and their own employer, rather than disputes between 'employers and workers' or 'workers and workers' as was formerly the case.

Taken together, these changes appear to make it virtually impossible for workers and unions lawfully to engage in any form of boycott activity, or 'sympathetic' action against parties not directly involved in a given dispute. The Committee has never expressed any decided view on the use of boycotts as an exercise of the right to strike. However, it appears to the Committee that where a boycott relates directly to the social and economic interests of the workers involved in either or both of the original dispute and the secondary action, and where the original dispute and the secondary action are not unlawful in themselves, then that boycott should be regarded as a legitimate exercise of the right to strike. This is clearly consistent with the approach the Committee has adopted in relation to 'sympathy strikes':

It would appear that more frequent recourse is being had to this form of action (i.e. sympathy strikes) because of the structure or the concentration of industries or the distribution of work centres in different regions of the world. The Committee considers that a general prohibition of sympathy strikes could lead to abuse and that workers should be able to take such action provided the initial strike they are supporting is itself lawful."

33. It appears that the Committee of Experts did not take a definitive position on the ban until its 1995 observation concerning the United Kingdom, when it observed as follows:

"The Committee draws the Government's attention to paragraph 168 of its 1994 *General Survey on Freedom of Association and Collective Bargaining* where it indicates that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful. The lifting of immunity opens such industrial action to be actionable in tort and therefore would constitute a serious impediment to the workers' right to carry out sympathy strikes."

It has maintained this view since, stating in its most recent review of the situation (2012 observation, see Report of the Committee of Experts to the International Labour Conference, 102nd Session, 2013, ILC.102/III(1A), pp. 195-96).):

"*Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA).* In its previous comments, the Committee had noted that according to the TUC, due to the decentralized nature of the industrial relations system, it was essential for workers to be able to take action against employers who are easily able to undermine union action by complex corporate structures, transferring work, or hiving off companies. The Committee generally

raised the need to protect the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. The Committee takes note of the Government indication that: (1) its position remains as set out in its report for 2006-08, that the rationale has not changed and that it therefore has no plans to change the law in this area; and (2) this issue forms part of a matter brought before the ECHR by the National Union of Rail, Maritime and Transport Workers (RMT) and that the Court has yet to consider the case. The Committee recalls the previous concern it raised that the globalization of the economy and the delocalization of work centres may have a severe impact on the right of workers' organizations to organize their activities in a manner so as to defend effectively their members' interests should lawful industrial action be too restrictively defined. ***In these circumstances, the Committee once again requests the Government to review sections 223 and 224 of the TULRA, in full consultation with the social partners, and to provide further information in its next report on the outcome of these consultations***."[4]

B. European Social Charter

34. The right to strike is protected by Article 6, paragraph 4, of the European Social Charter, which the United Kingdom ratified on 11 July 1962. It provides as follows:

"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

...

[to] recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

1. Concerning notice requirements

35. The European Committee on Social Rights (ECSR) has examined the British rules on strike ballots and deemed them incompatible with the proper exercise of the right to strike. In its most recent assessment of the matter (Conclusions XIX-3, 2010) it stated:

"The Committee considered in its previous conclusions ... that the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive (even the simplified requirements introduced by the Employment Relations Act (ERA)2004). As there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6 § 4 of the Charter in this respect."

4. Bold and italics used in original.

drivers in London during the 2012 Olympics, and one involving fuel lorry drivers). The charge that workers were prevented from taking action against the party that really determines their terms and conditions was no more than a hypothesis – no actual examples had been given. Nor had there been any decline in the number of days lost to strike action each year for the past twenty years, which tended to refute Liberty's view that domestic law had increasingly restricted trade-union freedom. In this respect, the United Kingdom was close to the European Union and Organisation for Economic Co-operation and Development average. As to the assertion that the threshold of twenty-one employees represented a loophole that employers could easily exploit in order to avoid having to recognise a trade union, the Government did not see its relevance to the facts of the case. Even so, there were safeguards in place to prevent employers from circumventing their statutory duty. Only genuine small firms were excluded, and that was for valid policy reasons. Finally, the Government submitted that there was no explicit support in the Court's case-law for the proposition that the right to take secondary action is an essential element of freedom of association, or that the ban could not be justified under Article 11 § 2.

2. The Court's assessment

(a) Applicability of Article 11

75. The Court must first determine whether, as the applicant union argued, secondary action comes within the scope of Article 11 of the Convention or, as the Government argued, it does not. The question is a novel one, not having arisen directly in any previous case.

76. What the Government propose is a literal reading of the second clause of the first paragraph of Article 11. Although it is possible to derive such a meaning from the language of the text taken on its own, the Court would observe that, as provided in Article 31 § 1 of the Vienna Convention on the Law of Treaties, the provisions of a treaty are to be interpreted in accordance with their ordinary meaning, in their context and in the light of the treaty's object and purpose. Furthermore, it has often stated that the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken, as indicated in Article 31 § 3 (c) of the Vienna Convention of "any relevant rules of international law applicable in relations between the parties", and in particular the rules concerning the international protection of human rights (see *X v. Latvia* [GC], no. 27853/09, § 92, ECHR 2013, with further references therein). In this regard, it is clear from the passages set out above (see paragraphs 26-37) that secondary action is recognised and protected as part of trade-union freedom under ILO Convention No. 87 and the European Social Charter. Although the Government have put a narrower construction on the positions adopted by the supervisory bodies that operate

under these two instruments, these bodies have criticised the United Kingdom's ban on secondary action because of a perceived risk of abuse by employers, and have illustrated this with some examples. The Government further queried the authority, for the purposes of the Convention, to be attributed to the interpretative pronouncements of the expert bodies tasked with supervising compliance with these specialised international standards. The Court will consider this later in its analysis. For now it suffices to refer to the following passage from the judgment in *Demir and Baykara v.Turkey* ([GC], no. 34503/97, § 85, ECHR 2008):

> "The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. ..."

It would be inconsistent with this method for the Court to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that is much narrower than that which prevails in international law. In addition, such an understanding of trade-union freedom finds further support in the practice of many European States that have long accepted secondary strikes as a lawful form of trade-union action.

77. It may well be that, by its nature, secondary industrial action constitutes an accessory rather than a core aspect of trade-union freedom, a point to which the Court will revert in the next stage of its analysis. Nonetheless, the taking of secondary industrial action by a trade union, including strike action, against one employer in order to further a dispute in which the union's members are engaged with another employer must be regarded as part of trade-union activity covered by Article 11.

78. The Court therefore concludes that the applicant union's wish to organise secondary action in support of the Hydrex employees must be seen as a wish to exercise, free of a restriction imposed by national law, its right to freedom of association within the meaning of Article 11 § 1 of the Convention. It follows that the statutory ban on secondary action as it operated in the example relied on by the applicant union constitutes an interference with its rights under this provision. To be compatible with paragraph 2 of Article 11, such interference must be shown to be "prescribed by law", to pursue a legitimate aim, and to be "necessary in a democratic society" to achieve those aims.

(b) Lawfulness and legitimacy of the interference

79. There was no dispute between the parties that the interference was prescribed by law. The Court agrees.

80. As to the aim of the interference, the applicant union argued that it found no legitimation in Article 11 § 2. It clearly did not concern national security or public safety, the prevention of disorder or crime, or the protection of health or morals. As for the remaining aim recognised as

of such a strike on members of the public was irrelevant to the legal issues arising. This Court took the same view, and for this reason the aim of "protection of the rights and freedoms of others" was taken in the circumstances as referring just to the employer's rights. The ground for distinguishing the present case is the fact that it concerns secondary action. As the Government have argued, by its nature secondary action may well have much broader ramifications than primary action. It has the potential to impinge upon the rights of persons not party to the industrial dispute, to cause broad disruption within the economy and to affect the delivery of services to the public. Accordingly, the Court is satisfied that in banning secondary action, Parliament pursued the legitimate aim of protecting the rights and freedoms of others, not limited to the employer side in an industrial dispute.

(c) Necessity in a democratic society

83. It remains to be determined whether the statutory ban on secondary industrial action, in as much as it affected the ability of the applicant union to protect the interests of its Hydrex members, can be regarded as being "necessary in a democratic society". To be so considered, it must be shown that the interference complained of corresponded to a "pressing social need", that the reasons given by the national authorities to justify it were relevant and sufficient and that it was proportionate to the legitimate aim pursued.

84. The Court will first consider the applicant union's argument that the right to take strike action must be regarded as an essential element of trade-union freedom under Article 11, so that to restrict it would be to impair the very essence of freedom of association. It observes that it has already decided a number of cases in which restrictions on industrial action were found to have given rise to violations of Article 11 (see, for example, *Karaçay*, cited above; *Dilek and Others v. Turkey*, nos. 74611/01, 26876/02 and 27628/02, 17 July 2007; *Urcan and Others v. Turkey*, nos. 23018/04 and 10 others, 17 July 2008; and *Enerji Yapı-Yol Sen v. Turkey*, no. 68959/01, 21 April 2009). The applicant union placed great emphasis on the last of these judgments, in which the term "indispensable corollary" was used in relation to the right to strike, linking it to the right to organise (see *Enerji Yapı-Yol Sen*, cited above, § 24). It should, however, be noted that the judgment was here adverting to the position adopted by the supervisory bodies of the ILO rather than evolving the interpretation of Article 11 by conferring a privileged status on the right to strike. More generally, what the above-mentioned cases illustrate is that strike action is clearly protected by Article 11. The Court does not therefore discern any need in the present case to determine whether the taking of industrial action should now be accorded the status of an essential element of the Article 11 guarantee.

85. What the circumstances of this case show is that the applicant union in fact exercised two of the elements of freedom of association that have been identified as essential, namely, the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members, and the right to engage in collective bargaining. The strike by its Hydrex members was part of that exercise, and while it did not achieve its aim, it was not in vain either since it led the company to revise its offer, which the applicant union then commended to its members. Although the Government criticised the applicant union for supporting the revised offer at the time and then reversing its stance in the present proceedings, the Court recognises that the union was bound to respect its members' negative vote. Yet the fact that the process of collective bargaining and industrial action, including strike action against the employer of the union members who were the subject of the dispute, did not lead to the outcome desired by the applicant union and its members does not mean that the exercise of their Article 11 rights was illusory. The right to collective bargaining has not been interpreted as including a "right" to a collective agreement (see, in this respect, *Demir and Baykara*, cited above, § 158, where the Court observed that the absence of any obligation on the authorities to actually enter into a collective agreement was not part of the case). Nor does the right to strike imply a right to prevail. As the Court has often stated, what the Convention requires is that under national law trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members' interests (ibid., § 141, and, more recently *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 34, ECHR 2013). This the applicant union and its members involved in the dispute were largely able to do in the present case.

86. In previous trade-union cases, the Court has stated that regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. Since achieving a proper balance between the interests of labour and management involves sensitive social and political issues, the Contracting States must be afforded a margin of appreciation as to how trade-union freedom and protection of the occupational interests of union members may be secured. In its most recent restatement of this point the Grand Chamber, referring to the high degree of divergence it observed between the domestic systems in this field, considered that the margin should be a wide one (see *Sindicatul "Păstorul cel Bun"*, cited above, § 133). The applicant union relied heavily on *Demir and Baykara* (cited above, § 119) in which the Court considered that the respondent State should be allowed only a limited margin. The Court would point out, however, that the passage in question appears in the part of the judgment examining a very far-reaching interference with freedom of association, one that intruded into its inner core, namely the dissolution of a trade union. It is not to be understood as narrowing decisively and

definitively the domestic authorities' margin of appreciation in relation to regulating, through normal democratic processes, the exercise of trade-union freedom within the social and economic framework of the country concerned. The breadth of the margin will still depend on the factors that the Court in its case-law has identified as relevant, including the nature and extent of the restriction on the trade-union right in issue, the object pursued by the contested restriction, and the competing rights and interests of other individuals in society who are liable to suffer as a result of the unrestricted exercise of that right. The degree of common ground between the member States of the Council of Europe in relation to the issue arising in the case may also be relevant, as may any international consensus reflected in the apposite international instruments (see *Demir and Baykara*, cited above, § 85).

87. If a legislative restriction strikes at the core of trade-union activity, a lesser margin of appreciation is to be recognised to the national legislature and more is required to justify the proportionality of the resultant interference, in the general interest, with the exercise of trade-union freedom. Conversely, if it is not the core but a secondary or accessory aspect of trade-union activity that is affected, the margin is wider and the interference is, by its nature, more likely to be proportionate as far as its consequences for the exercise of trade-union freedom are concerned.

88. As to the nature and extent of the interference suffered in the present case by the applicant union in the exercise of its trade-union freedom, the Court considers that it was not as invasive as the applicant union would have it. What the facts of the case reveal is that it held a strike, albeit on a limited scale and with limited results. It was its wish to escalate the strike, through the threatened or actual involvement of hundreds of its members at Jarvis, another, separate, company not at all involved in the trade dispute in question, that was frustrated. The Court has noted the applicant union's conviction that secondary action would have won the day. Inevitably, that can only be a matter of speculation – including as to the result of any ballot on the subject – since that course of action was clearly ruled out. It cannot be said that the effect of the ban on secondary action struck at the very substance of the applicant union's freedom of association. On this ground the case is to be distinguished from those referred to in paragraph 84 above, which all concerned restrictions on "primary" or direct industrial action by public-sector employees; and the margin of appreciation to be recognised to the national authorities is the wider one available in relation to the regulation, in the public interest, of the secondary aspects of trade-union activity.

89. As for the object of the interference in issue in the present case, the extracts from the debates in Parliament preceding the passage of the Employment Act 1980 make clear the legislative intention to strike a new balance in industrial relations, in the interests of the broader economy, by

curbing what was a very broad right to take secondary action. A decade later, the government of the day considered that even in its more limited form secondary action posed a threat to the economy and to inward investment in the country's economic activity. As a matter of policy it considered that restricting industrial action to primary strikes would achieve a more acceptable balance within the British economy. The Government have reiterated that position in the present proceedings. That assessment was sharply contested at the time by the opposition in Parliament, and is rejected by the applicant union as grounded in animus towards trade unions rather than any clear evidence of direct damage to the economy. Yet the subject matter in this case is certainly related to the social and economic strategy of the respondent State. In this regard the Court has usually allowed a wide margin of appreciation since, by virtue of their direct knowledge of their society and its needs, the national authorities, and in particular the democratically elected Parliaments, are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds and which legislative measures are best suited for the conditions in their country in order to implement the chosen social, economic or industrial policy (see, among many authorities, *Stummer v. Austria* [GC], no. 37452/02, § 89, ECHR 2011).

90. There are, it is true, factors going in another direction as regards the range of permissible choices available to the United Kingdom legislature.

91. The first of these is the extent to which it can be said that there is common ground among European States as regards secondary action. The comparative information adduced before the Court reveals a spectrum of national positions, ranging from a broadly permissive stance in countries such as Greece, Finland, Norway and Sweden, to those that do not recognise or permit it. The other States mentioned above (see paragraphs 38-41) are located between these two outer points. The Government played down the significance of the comparative perspective, emphasising the deep structural and cultural differences among European States in the field of industrial relations. The Court acknowledges that diversity, which it has recognised in other cases concerning the rights of trade unions (see, for example, *Sindicatul "Păstorul cel Bun"*, cited above, § 133, and *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 58, ECHR 2006-I). It is nevertheless clear that, with its outright ban on secondary action, the respondent State stands at one end of the comparative spectrum, being one of a small group of European States to adopt such a categorical stance on the matter. The varied comparative picture, and the position of the United Kingdom within it, do not in themselves, however, mean that the domestic authorities have overstepped their legitimate margin of appreciation in regulating this aspect of trade-union activity.

92. Secondly, a prominent feature of this case is the wealth of international-law material. The United Kingdom banned secondary action

more than two decades ago and throughout this time has been subject to critical comments by the ILO Committee of Experts and the ECSR. The applicant union prayed these materials in aid. The Government did not consider the particular criticisms made to be relevant to the factual situation denounced in the present case, or otherwise significant. The Court will now examine this point.

93. The Government disputed the relevance to this case of the two bodies' criticisms in light of the manner in which they were formulated, as they contemplated quite different potential situations to the one impugned by the applicant union (see paragraphs 33 and 37 above).

94. The Government did not regard the ECSR's assessment as an authoritative source of law, since, despite the independence and expertise of its members, the ECSR did not possess judicial or quasi-judicial status. Its role was to report to the Committee of Ministers. The Court observes that the ECSR's competence is stipulated in the Protocol amending the European Social Charter (also known as the "Turin Protocol", Council of Europe Treaty Series No. 142), namely to "assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter". It is true that this Protocol has not come into force as several States Parties to the Charter, including the United Kingdom, have not ratified it. Yet the interpretative value of the ECSR appears to be generally accepted by States and by the Committee of Ministers. It is certainly accepted by the Court, which has repeatedly had regard to the ECSR's interpretation of the Charter and its assessment of State compliance with its various provisions (see, for example, *Demir and Baykara*, cited above; see also *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, § 39, ECHR 2006-II, a trade-union case in which the Court described the ECSR as a "particularly qualified" body in this domain).

95. As for the absence of any recommendation by the Committee of Ministers to the United Kingdom in relation to this issue, the Court notes first of all that the role of the Committee of Ministers under the Turin Protocol is to address recommendations to States on a selective basis, guided by social, economic and other policy considerations. Its role is not to endorse the conclusions of the ECSR. Secondly, the Court notes that the Governmental Committee of the European Social Charter has taken a first step in the direction of a Committee of Ministers' recommendation on the issue of secondary action, by adopting a warning to the United Kingdom that "urged the Government to take all adequate steps to bring the situation into conformity with the Charter" (see its Report concerning Conclusions XIX-3 (2010), T-SG(2012)1_final, at p. 59).

96. With respect to the ILO Committee of Experts, the Government made a similar observation – that body was not formally competent to give authoritative interpretations to ILO Conventions. It drew the Court's attention to an ongoing disagreement within the ILO precisely regarding the

legal status or even existence of a right to strike. The Committee of Experts had recently recognised the limits of its role, stating that "[its] opinions and recommendations are not binding within the ILO supervisory process and are not binding outside the ILO unless an international instrument expressly establishes them as such or the Supreme Court of a country so decides of its own volition" (from the foreword to "Collective Bargaining in the Public Service: A way forward", a report of the ILO Committee of Experts to the 102nd session of the International Labour Conference, 2013). This text goes on to describe the Committee of Expert's interpretations as "soft law". The foreword concludes (§ 8):

> "As regards the interpretation of ILO Conventions and the role of the International Court of Justice in this area, the Committee has pointed out since 1990 that its terms of reference do not enable it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. It has stated, nevertheless, that in order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider the content and meaning of the provisions of Conventions, to determine their legal scope, and where appropriate to express its views on these matters. The Committee has consequently considered that, in so far as its views are not contradicted by the International Court of Justice, they should be considered as valid and generally recognized. The Committee considers the acceptance of these considerations to be indispensable to maintaining the principle of legality and, consequently, to the certainty of law required for the proper functioning of the International Labour Organization."

97. The Court does not consider that this clarification requires it to reconsider this body's role as a point of reference and guidance for the interpretation of certain provisions of the Convention (see, more generally, *Demir and Baykara*, cited above, §§ 65-86). While the Government referred to disagreements voiced at the 101st International Labour Conference, 2012, it appears from the records of that meeting that the disagreement originated with and was confined to the employer group (Provisional Record of the 101st Session of the International Labour Conference, No. 19 (Rev.), §§ 82-90). The governments who took the floor during that discussion were reported as saying that the right to strike was "well established and widely accepted as a fundamental right". The representative of the government of Norway added that her country fully accepted the Committee of Experts' interpretation that the right to strike was protected under Convention No. 87. In any event, the respondent Government accepted in the present proceedings that the right afforded under Article 11 to join a trade union normally implied the ability to strike (see paragraph 62 above).

98. The foregoing analysis of the interpretative opinions emitted by the competent bodies set up under the most relevant international instruments mirrors the conclusion reached on the comparative material before the Court, to wit that with its outright ban on secondary industrial action, the respondent State finds itself at the most restrictive end of a spectrum of

national regulatory approaches on this point and is out of line with a discernible international trend calling for a less restrictive approach. The significance that such a conclusion may have for the Court's assessment in a given case was explained in *Demir and Baykara* (cited above, § 85) in the following terms:

> "... The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases."

The Grand Chamber's statement reflects the distinct character of the Court's review compared with that of the supervisory procedures of the ILO and the European Social Charter. The specialised international monitoring bodies operating under those procedures have a different standpoint, shown in the more general terms used to analyse the ban on secondary action (see paragraphs 33 and 37 above). In contrast, it is not the Court's task to review the relevant domestic law in the abstract, but to determine whether the manner in which it actually affected the applicant infringed the latter's rights under Article 11 of the Convention (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 116, ECHR 2012; see also *Kart v. Turkey* [GC], no. 8917/05, §§ 85-87, ECHR 2009). The applicant union as well as the third parties dwelt on the possible effect of the ban in various hypothetical scenarios, which could go as far as to exclude any form of industrial action at all if the workers directly concerned were not in a position to take primary action, thereby, unlike in the present case, striking at the very substance of trade-union freedom. They also considered that the ban could make it easy for employers to exploit the law to their advantage through resort to various legal stratagems, such as delocalising work centres, outsourcing work to other companies and adopting complex corporate structures in order to transfer work to separate legal entities or to hive off companies. In short, trade unions could find themselves severely hampered in the performance of their legitimate, normal activities in protecting their members' interests. These alleged, far-reaching negative effects of the statutory ban do not, however, arise in the situation at Hydrex. The Court's review is bounded by the facts submitted for examination in the case. This being so, the Court considers that the negative assessments made by the relevant monitoring bodies of the ILO and European Social Charter are not of such persuasive weight for determining whether the operation of the statutory ban on secondary strikes in circumstances such as those complained of in the present case remained within the range of permissible options open to the national authorities under Article 11 of the Convention.

99. The domestic authorities' power of appreciation is not unlimited, however, but goes hand in hand with European supervision, it being the Court's task to give a final ruling on whether a particular restriction is reconcilable with freedom of association as protected by Article 11 (see *Vörður Ólafsson v. Iceland*, no. 20161/06, § 76, ECHR 2010). The

Government have argued that the "pressing social need" for maintaining the statutory ban on secondary strikes is to shield the domestic economy from the disruptive effects of such industrial action, which, if permitted, would pose a risk to the country's economic recovery. In the sphere of social and economic policy, which must be taken to include a country's industrial-relations policy, the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010). Moreover, the Court has recognised the "special weight" to be accorded to the role of the domestic policy-maker in matters of general policy on which opinions within a democratic society may reasonably differ widely (see, in the context of Article 10 of the Convention, *MGN Limited v. the United Kingdom*, no. 39401/04, § 200, 18 January 2011, referring in turn to *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII, where the Court adverted to the "direct democratic legitimation" that the legislature enjoys). The ban on secondary action has remained intact for over twenty years, notwithstanding two changes of government during that time. This denotes a democratic consensus in support of it, and an acceptance of the reasons for it, which span a broad spectrum of political opinion in the United Kingdom. These considerations lead the Court to conclude that in their assessment of how the broader public interest is best served in their country in the often charged political, social and economic context of industrial relations, the domestic legislative authorities relied on reasons that were both relevant and sufficient for the purposes of Article 11.

100. The Court must also examine whether or not the contested restriction offended the principle of proportionality. The applicant union argued that it did, given its absolute character, which completely excluded any balancing of the competing rights and interests at stake and prohibited any differentiation between situations. The Government defended the legislature's decision to eschew case-by-case consideration in favour of a uniform rule, and contended that any less restrictive approach would be impracticable and ineffective. In their submission, the inevitable variations in the potentially numerous individual cases such as the present one are not such as to disturb the overall balance struck by Parliament.

101. The Court observes that the general character of a law justifying an interference is not inherently offensive to the principle of proportionality. As it has recently stated, a State may, consistently with the Convention, adopt general legislative measures applying to predefined situations without providing for individualised assessments with regard to the individual, necessarily differing and perhaps complex circumstances of each single case governed by the legislation (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 107, ECHR 2013, with many further references concerning different provisions of the Convention and Protocol No. 1). That does not mean the specific facts of the individual case are

without significance for the Court's analysis of proportionality. Indeed, they evidence the impact in practice of the general measure and are thus material to its proportionality (ibid., § 108). As already stated, the interference with the applicant union's freedom of association in the set of facts at Hydrex relied on by it cannot objectively be regarded as especially far reaching.

102. The risks attendant upon any relaxation of the ban constitute a relevant consideration, which is primarily for the State to assess (ibid., § 108). In this respect, the applicant union has argued that it would have limited its action to a secondary strike at Jarvis, with no further spill-over effects. That can only be a matter of speculation however. As the materials in the case file show, the very reason that caused Parliament to curb the broad scope for secondary action was its capacity, pre-1980, to spread far and fast beyond the original industrial dispute. It is to that situation that, according to the applicant union, the United Kingdom should return if it is to conform to the requirements of Article 11.

103. As has been recognised in the case-law, it is legitimate for the authorities to be guided by considerations of feasibility, as well as of the practical difficulties – which, for some legislative schemes, may well be large-scale – to which an individuated approach could give rise, such as uncertainty, endless litigation, disproportionate public expenditure to the detriment of the taxpayer and possibly arbitrariness (ibid.). In this regard it is relevant to note that for a period of ten years, 1980-90, the United Kingdom found it possible to operate with a lighter restriction on secondary action (see paragraphs 23-24 above). The Government have not argued that this legislative regime was attended by the difficulties referred to above, or that this was why the ban was introduced. The applicant union did not comment in detail on the legal position during that period. It took the view that the question of its compatibility with the Convention was "of entirely academic interest", though added that were the point relevant it would argue such a restriction would not be acceptable. The Court observes that, although the legislative history of the United Kingdom points to the existence of conceivable alternatives to the ban, that is not determinative of the matter. For the question is not whether less restrictive rules should have been adopted or whether the State can establish that, without the prohibition, the legitimate aim would not be achieved. It is rather whether, in adopting the general measure it did, the legislature acted within the margin of appreciation afforded to it (see *Animal Defenders*, cited above, § 110) – which, for the reasons developed above, the Court has found to be a broad one – and whether, overall, a fair balance was struck. Although the applicant union has adduced cogent arguments of trade-union solidarity and efficacy, these have not persuaded the Court that the United Kingdom Parliament lacked sufficient policy and factual reasons to consider the impugned ban on secondary industrial action as being "necessary in a democratic society".

104. The foregoing considerations lead the Court to conclude that the facts of the specific situation challenged in the present case do not disclose an unjustified interference with the applicant union's right to freedom of association, the essential elements of which it was able to exercise, in representing its members, in negotiating with the employer on behalf of its members who were in dispute with the employer and in organising a strike of those members at their place of work (see paragraphs 15-16 above). In this legislative policy area of recognised sensitivity, the respondent State enjoys a margin of appreciation broad enough to encompass the existing statutory ban on secondary action, there being no basis in the circumstances of this case to consider the operation of that ban in relation to the impugned facts at Hydrex as entailing a disproportionate restriction on the applicant union's right under Article 11.

105. Accordingly, no violation of Article 11 of the Convention can be held to have occurred on the facts of the present case.

106. In closing, the Court would stress that its jurisdiction is limited to the Convention. It has no competence to assess the respondent State's compliance with the relevant standards of the ILO or the European Social Charter, the latter containing a more specific and exacting norm regarding industrial action. Nor should the conclusion reached in this case be understood as calling into question the analysis effected on the basis of those standards and their purposes by the ILO Committee of Experts and by the ECSR.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection and *declares* the complaint concerning the ban on secondary action admissible and the remainder of the application inadmissible;

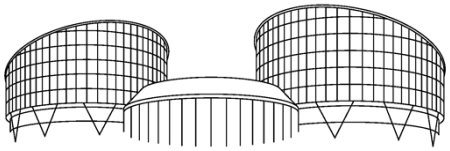
2. *Holds* that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 8 April 2014 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President

Document No. 320

ECtHR, Ognevenko v. Russia (2018), paras 20–23 and 54–59



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OGNEVENKO v. RUSSIA

(Application no. 44873/09)

JUDGMENT

STRASBOURG

20 November 2018

FINAL

06/05/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

...

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State ..."

B. International Labour Organisation ("ILO") material

1. ILO principles concerning the right to strike

20. In its Digest of decisions and principles (fifth (revised) edition, 2006) the ILO Committee of Freedom of Association ("the CFA") stated as follows in the Section entitled "Right to strike" (the quotations below are provided without the references to specific cases):

"541. The Committee has stated on many occasions that strikes at the national level are legitimate in so far as they have economic and social objectives and not purely political ones; the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.

...

587. The following do not constitute essential services in the strict sense of the term:

...

– transport generally;

...

– railway services;

...

592. By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be maintained.

...

595. Where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.

596. As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and public services ... should be accompanied by adequate, impartial and speedy conciliation and arbitration

proceedings in which the parties concerned can take part at every stage and in which awards, once made, are fully and promptly implemented.

...

621. The transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified.

...

628. Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved.

...

666. The use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association."

2. Relevant case-law in respect of Russia

21. In its Report no. 333, March 2004, on case no. 2251 the CFA found in respect of Russia as follows:

"993. ... The Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the state; (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); and (3) in the event of an acute national emergency [see Digest, op. cit., paras. 526 and 527]. ... As concerns the abovementioned categories of workers, who, according to the relevant federal laws, cannot recourse to a strike action, the Committee notes that the list includes employees of railway, which does not constitute essential services in the strict sense of the term. The Committee therefore requests the Government to amend its legislation so as to ensure that railway employees ... enjoy the right to strike."

22. The ILO Committee of Experts on the Application of Conventions and Recommendations ("the CEACR") similarly reiterated in respect of Russia that the right to strike may be restricted or prohibited only in respect of public servants exercising authority in the name of the State and in essential services in the strict sense of the term – that is to say services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

23. The CEACR also reminded Russia that railway transport did not constitute an essential service in the strict sense of the term whereby strikes could be prohibited and that instead, a negotiated minimum service could be established. It continues to request Russia to ensure that railway workers can exercise the right to strike.

49. The applicant also stressed that the employer could have contested the lawfulness of the strike before a court, as required by Article 413 of the LC, but failed to do so.

50. He thus concluded that the strike itself and his participation in it had been lawful and that his dismissal had consequently not been in accordance with the law.

51. On the basis of the lack of any evidence of the alleged threat to the country's defence, State security or the life and health of people posed by strikes, the applicant also considered that the restriction on his right to strike had had no legitimate aim.

(iv) The interference was not necessary in a democratic society

52. The applicant reiterated that the test of necessity in a democratic society required the Court to determine whether the interference complained of had corresponded to a "pressing social need", whether it had been proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it had been relevant and sufficient (see, for instance, *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, ECHR 2002-VI). The applicant considered that his dismissal from work had not been proportionate to his participation in a lawful strike. He also relied on the ILO CFA's case-law to the effect that no one should be penalised for participating in a strike action.

53. The applicant thus considered that his dismissal for participation in a lawful strike had violated Article 11 of the Convention.

2. The Court's assessment

(a) General principles

54. The Court reiterates that Article 11 § 1 presents trade union freedom as one form or a special aspect of freedom of association (see *National Union of Belgian Police*, cited above, § 38; *Swedish Engine Drivers' Union v. Sweden*, judgment of 6 February 1976, § 39, Series A no. 20; *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, § 28, ECHR 2006-II; and *Demir and Baykara*, cited above, § 109).

55. The words "for the protection of [one's] interests" which appear in Article 11 § 1 are not redundant and the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible (see *National Union of Belgian Police*, cited above, § 39; *Swedish Engine Drivers' Union*, cited above, § 40; and *Wilson, National Union of Journalists and Others*, cited above, § 42). A trade union must thus be free to strive for the protection of its members' interests, and its individual members have a right, in order to protect their interests, that that trade union should be heard (see *National Union of Belgian Police*,

cited above, §§ 39-40, and *Swedish Engine Drivers' Union*, cited above, §§ 40-41). Another essential right of a trade union is the right to collectively bargain with an employer (see *Demir and Baykara*, cited above, § 154).

56. Article 11 of the Convention does not secure any particular treatment of trade unions or their members and leaves each State a free choice of the means to be used to secure a trade union's freedom to protect the occupational interests of its members (see *National Union of Belgian Police*, cited above, §§ 38-39; *Swedish Engine Drivers' Union*, cited above, §§ 39-40; *Wilson, National Union of Journalists and Others*, cited above, § 42; and *Tüm Haber Sen and Çınar*, cited above, § 28). The granting of a right to strike constitutes without any doubt one of the most important of such means (see *Schmidt and Dahlström*, cited above, § 36; *UNISON v. the United Kingdom* (dec.), no. 53574/99, ECHR 2002‑I; and *Wilson, National Union of Journalists and Others*, cited above, § 45).

57. The Court has on several occasions held that strike action is protected by Article 11 (see *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 84, ECHR 2014, with further references).

58. The right to strike is not absolute and may be subject under national law to regulation of a kind that limits or conditions its exercise in certain instances (see *Schmidt and Dahlström*, cited above, § 36, and *Enerji Yapi-Yol Sen*, cited above, § 32).

59. Article 11 § 2 does not exclude any occupational group from its scope. At most, the national authorities are entitled to impose "lawful restrictions" on certain of their employees (see *Tüm Haber Sen and Çınar*, cited above, §§ 28-29; *Demir and Baykara*, cited above, § 107, and *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 145, ECHR 2013 (extracts)). However, the restrictions imposed on the three groups mentioned in Article 11 § 2 are to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association (see *Tüm Haber Sen and Çınar*, cited above, § 35; see also *Adefdromil v. France*, no. 32191/09, § 55, 2 October 2014, and *Matelly v. France*, no. 10609/10, § 71, 2 October 2014). These restrictions should therefore be confined to the "exercise" and must not impair the very essence of the right to organise (see *Demir and Baykara*, cited above, § 97).

(b) Application of these principles to the present case

(i) whether there was an interference

60. The parties did not dispute the existence of an interference with the rights protected by Article 11 of the Convention. The Court sees no reason to hold otherwise.

61. As noted above, the right to strike is one of the means whereby a trade union may attempt to be heard and to bargain collectively in order to

Document No. 321

CJEC, Case C-438/05, International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP (2007), paras 43–44

JUDGMENT OF THE COURT (Grand Chamber)

11 December 2007 *

In Case C-438/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), made by decision of 23 November 2005, received at the Court on 6 December 2005, in the proceedings

International Transport Workers' Federation,

Finnish Seamen's Union,

v

Viking Line ABP,

OÜ Viking Line Eesti,

* Language of the case: English.

42 Next, according to the observations of the Danish and Swedish Governments, the right to take collective action, including the right to strike, constitutes a fundamental right which, as such, falls outside the scope of Article 43 EC.

43 In that regard, it must be recalled that the right to take collective action, including the right to strike, is recognised both by various international instruments which the Member States have signed or cooperated in, such as the European Social Charter, signed at Turin on 18 October 1961 — to which, moreover, express reference is made in Article 136 EC — and Convention No 87 concerning Freedom of Association and Protection of the Right to Organise, adopted on 9 July 1948 by the International Labour Organisation — and by instruments developed by those Member States at Community level or in the context of the European Union, such as the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, which is also referred to in Article 136 EC, and the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1).

44 Although the right to take collective action, including the right to strike, must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions. As is reaffirmed by Article 28 of the Charter of Fundamental Rights of the European Union, those rights are to be protected in accordance with Community law and national law and practices. In addition, as is apparent from paragraph 5 of this judgment, under Finnish law the right to strike may not be relied on, in particular, where the strike is *contra bonos mores* or is prohibited under national law or Community law.

Document No. 322

CJEC, Case C-341/05, Laval Un Partneri Ltd v. Svenska Byggnadsarbetareförbundet (2007), paras 90–91

JUDGMENT OF THE COURT (Grand Chamber)

18 December 2007 *

In Case C-341/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Arbetsdomstolen (Sweden), made by decision of 15 September 2005, received at the Court on 19 September 2005, in the proceedings

Laval un Partneri Ltd

v

Svenska Byggnadsarbetareförbundet,

Svenska Byggnadsarbetareförbundets avd. 1, Byggettan,

Svenska Elektrikerförbundet,

* Language of the case: Swedish.

90 In that regard, it must be recalled that the right to take collective action is recognised both by various international instruments which the Member States have signed or cooperated in, such as the European Social Charter, signed at Turin on 18 October 1961 — to which, moreover, express reference is made in Article 136 EC — and Convention No 87 of the International Labour Organisation concerning Freedom of Association and Protection of the Right to Organise of 9 July 1948 — and by instruments developed by those Member States at Community level or in the context of the European Union, such as the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, which is also referred to in Article 136 EC, and the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1).

91 Although the right to take collective action must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions. As is reaffirmed by Article 28 of the Charter of Fundamental Rights of the European Union, it is to be protected in accordance with Community law and national law and practices.

92 Although it is true, as the Swedish Government points out, that the right to take collective action enjoys constitutional protection in Sweden, as in other Member States, nevertheless as is clear from paragraph 10 of this judgment, under the Swedish constitution, that right — which, in that Member State, covers the blockading of worksites — may be exercised unless otherwise provided by law or agreement.

93 In that regard, the Court has already held that the protection of fundamental rights is a legitimate interest which, in principle, justifies a restriction of the obligations imposed by Community law, even under a fundamental freedom guaranteed by the

Document No. 323

IACtHR, Advisory Opinion OC-27/21, Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective (2021), paras 95–105

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-27/21
MAY 5, 2021
REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RIGHT TO FREEDOM OF ASSOCIATION, RIGHT TO COLLECTIVE BARGAINING AND RIGHT TO STRIKE, AND THEIR RELATION TO OTHER RIGHTS, WITH A GENDER PERSPECTIVE

(INTERPRETATION AND SCOPE OF ARTICLES 13, 15, 16, 24, 25 Y 26, IN CONJUNCTION WITH ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS, ARTICLES 3, 6, 7 AND 8 OF THE PROTOCOL OF SAN SALVADOR, ARTICLES 2, 3, 4, 5 AND 6 OF THE CONVENTION OF BELEM DO PARA, ARTICLES 34, 44 AND 45 OF THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES, AND ARTICLES II, IV, XIV, XXI AND XXII OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN)

The Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court,") composed of the following judges:

Elizabeth Odio Benito, President;
L. Patricio Pazmiño Freire, Vice-President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Registrar, and
Romina I. Sijniensky, Deputy Registrar,

pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter "the American Convention or the Convention") and articles 70 to 75 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this Advisory Opinion structured as follows:

agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98."[123]

93. The Court also holds that public service workers should enjoy effective protection from all acts of discrimination against trade unions in connection with their employment, such that the state should give priority to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service.[124] This means that workers and their representatives must be able to participate fully and meaningfully in negotiation processes, and for this purpose, the state must provide workers with access to the information they need to familiarize themselves with the material necessary to conduct negotiations. This is particularly critical in wage negotiations, as in the context of economic stabilization, the states should give priority to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector.[125] The Court also deems that no action is permissible if it entails requiring workers to belong to any particular organization of public service workers in order to keep their jobs, or firing them for taking part in union activities.

94. In view of all this, the Court would add as a corollary that the right to collective bargaining, an essential part of the freedom to organize, consists of various components, including at least the following: (a) the principle of freedom from discrimination for workers who are involved in union activities, as the guarantee of equality is a prior condition for negotiations between employers and workers; (b) freedom from direct or indirect interference by employers during the creation, operation and administration of workers' labor unions, as this could produce an imbalance in negotiations that would undermine the workers' objective of improving their living and working conditions through collective bargaining or other lawful means; and (c) progressively encouraging processes of voluntary negotiation between employers and workers aimed at improving working conditions through collective bargaining agreements.

D. The right to strike

95. The right to strike is one of the fundamental human rights of workers, and they can avail themselves of it even outside of their organizations. This is stated in Articles 45(c) of the OAS Charter (workers' right to strike) and 27 of the Inter-American Charter of Social Guarantees (workers have the right to strike); it is also stated, and deliberately placed separately from the rights of union organizations, in Articles 8(b) of the Protocol of San Salvador and 8(1)(d) of the ICESCR[126] (*supra,* par. 47 and 48, and 56 to 60). Otherwise, the negative dimension of freedom of association in the individual sense could be breached. It is also one of the leading rights of union organizations in general.

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[123] *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 1360. *Cf.* Committee on Freedom of Association, 368th report, case number 2919, paragraph 651.

[124] *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 1241. *Cf.* Committee on Freedom of Association, 343rd report, case number 2430, paragraph 361, and case number 2292, paragraph 794; 344th report, case number 2364, paragraph 91; 376th report, case number 3042, paragraph 560; 377th report, case number 3118, paragraph 177; and 378th report, case number 3135, paragraph 418.

[125] *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 1492. *Cf.* Committee on Freedom of Association, 368th report, case number 2918, paragraph 362.

[126] The placement of a provision can be a factor of considerable importance for interpretation purposes. *Cf. Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights). Advisory Opinion OC-7/86 of August 29, 1986.* Series A No. 7, par. 25, and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985.* Series A No. 5, par. 47.

96. The Court cautions that, although the right to strike is not expressly recognized in the ILO conventions, nonetheless, Article 3 of Convention 87 does recognize the right of worker organizations "in full freedom, to organise their administration and activities and to formulate their programmes" (*supra* par. 63). The Committee on Freedom of Association has accordingly recognized the importance of the right to strike as "an intrinsic corollary to the right to organize protected by Convention No. 87."[127] In both cases, the strike is a legitimate means for defending economic, social and occupational interests. It is a resource that workers use to apply pressure on their employers for correcting an injustice or for seeking solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.

97. The Court also notes that, in addition to being broadly recognized in international *corpus juris,* the right to strike has also been recognized in the national constitutions and laws of OAS member states.[128] It can thus be considered a general principle of international law.

98. The Committee on Freedom of Association, in general terms, understands a strike as "a temporary work stoppage (or slowdown) willfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances."[129] The Court concurs with this definition and deems the right to strike to be one of the fundamental rights of workers and their organizations, as it is a legitimate means to defend their economic, social and occupational interests. It is a resource that workers use as a means to apply pressure on their employers for correcting an injustice or for seeking solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.[130] The European Court has ranked strikes as the "most powerful" instrument to protect labor rights.[131]

99. This Court holds that there are three categories of purposes or demands that can be expressed through strike and that are subject to protection: labor issues intended to improve working or living conditions for workers; trade union issues putting forward the collective demands of union organizations; and strikes seeking to challenge public policies.[132]

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127 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 754. *Cf.* Committee on Freedom of Association, 344th report, case number 2471, paragraph 891; 346th report, case number 2506, paragraph 1076, case number 2473, paragraph 1532; 349th report, case number 2552, paragraph 419; 354th report, case number 2581, paragraph 1114; and 362nd report, case number 2838, paragraph 1077.

128 *Cf. Constitución de la Nación Argentina,* Article 14 bis; *Constitución Política del Estado Plurinacional de Bolivia,* Article 53; *Constitución Política de Brasil*, Article 9; *Constitución Política de la República de Chile,* Article 16; *Constitución Política de Colombia,* Article 56; *Constitución Política de la República de Costa Rica*, Article 61; *Constitución de la República de Ecuador,* Article 35.10; *Constitución Política de El Salvador*, Article 48; *Constitución Política de Guatemala*, Article 104; *Constitución de la República de Honduras*, Article 128; *Constitución Política de los Estados Unidos Mexicanos,* Article 123 A XVIII; *Constitución Política de la República de Nicaragua*, Article 83, *Constitución Política de Panamá,* Article 69; *Constitución de la República del Paraguay*, Article 98; *Constitución Política de Perú*, Article 28; *Constitución Política de la República Dominicana,* Article 62.6, and *Constitución de la República Oriental del Uruguay*, Article 57, *Canadian Charter of Rights and Freedoms,* assented to in 1982, Article 2(b), and *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, [2015] 1 S.C.R. 245, par.3.

129 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 783; *Cf.* Committee on Freedom of Association, 358th report, case number 2716, paragraph 862.

130 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 758; *Cf.* Committee on Freedom of Association, 344th report, case number 2496, paragraph 407; 353rd report, case number 2619, paragraph 573; 355th report, case number 2602, paragraph 668; 357th report, case number 2698, paragraph 224; 371st report, case number 2963, paragraph 236, case number 2988, paragraph 852; and 378th report, case number 3111, paragraph 712.

131 ECtHR, *Hrvatski Liječnički sindikat v. Croatia*, No. 36701/09, judgment of November 27, 2014, par. 59.

132 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 758 and 763. *Cf.* Committee on Freedom of Association, 344th report, case number 2509, paragraph 1247; 348th report, case number 2530, paragraph 1190; 351st report, case number 2616, paragraph 1012; 353rd report, case number 2619, paragraph 573; 355th report,

100. The Court also upholds the standard of legality as a key factor to determine whether the right to strike can be exercised. The Court deems, in this sense, that the states should adopt measures of domestic law as necessary to bring their legislation into line with the content of this right. In doing so, the states should consider that, even allowing for certain exceptions under international law, the legislation should protect the exercise of the right to strike for all workers. Thus, the preconditions and prior requirements allowed by law for a strike to be considered legal should not be so complicated as to render a legal strike impossible in practice. The obligation to give the employer advance notice before calling a strike is admissible, so long as the notice is reasonable.[133] The same is not true of the requirement to set a limit on the duration of a strike which, due to its nature as a last resort for the defense of workers' interests, cannot be predetermined.[134]

101. The Court also emphasizes that the power to declare a strike illegal should not lie with an administrative body; instead, it pertains to the judicial authority to make the determination, applying mandatory grounds stipulated in advance by the law, in keeping with the rights to judicial guarantees called for in Article 8 of the American Convention.[135] The Court also holds that the state must refrain from applying sanctions to workers who take part in a legal strike, which is a legitimate union activity and the exercise of a human right, and it must guarantee that no such sanctions be applied by private companies.

102. The Court deems, furthermore, that the exercise of the right to strike can be restricted or prohibited only in the case of: (a) public servants who serve as arms of public power and exercise authority on behalf of the state, and (b) workers in essential services.[136]

103. Workers who provide essential services should be so defined according to the strict sense of the term, that is, providing services whose interruption entails a clear and imminent threat to the life, safety, health or freedom of the whole or part of the population (for example, workers in the hospital sector, electricity services, or water supply services).[137] The Court also upholds the need for appropriate compensatory guarantees to be in place for those services considered essential and for

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case number 2602, paragraph 668; 360th report, case number 2747, paragraph 841; and 372nd report, case number 3011, paragraph 646.

133 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 799; *Cf.* Committee on Freedom of Association, 340th report, case number 2415, paragraph 1257; 344th report, case number 2509, paragraph 1246; 346th report, case number 2473, paragraph 1542; and 376th report, case number 2994, paragraph 1002.

134 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 815. *Cf.* Committee on Freedom of Association, 376th report, case number 2994, par. 1002.

135 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 910. *Cf.* Committee on Freedom of Association, 343rd report, case number 2355, paragraph 471; 348th report, case number 2355, paragraph 309, and case number 2356, paragraph 368.

136 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 830. *Cf.* Committee on Freedom of Association, 340th report, case number 1865, paragraph 751; 344th report, case number 2467, paragraph 578; 346th report, case number 2500, paragraph 324; 348th report, case number 2433, paragraph 48, case number 2519, paragraph 1141; 349th report, case number 2552, paragraph 421; 351st report, case number 2355, paragraph 361, case number 2581, paragraph 1336; 353rd report, case number 2631, paragraph 1357; 354th report, case number 2649, paragraph 395; 356th report, case number 2654, paragraph 370; 357th report, case number 2698, paragraph 224; 362nd report, case number 2741, paragraph 767, case number 2723, paragraph 842; 365th report, case number 2723, paragraph 778; 367th report, case number 2894, paragraph 335, case number 2885, paragraph 384, case number 2929, paragraph 637, case number 2860, paragraph 1182; 370th report, case number 2956, paragraph 142; 371st report, case number 3001, paragraph 211, case number 2988, paragraph 851; 372nd report, case number 3022, paragraph 614; 374th report, case number 3057, paragraph 213; 377th report, case number 3107, paragraph 240; and 378th report, case number 3111, paragraph 715.

137 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 836 and 840. *Cf.* Committee on Freedom of Association, 343rd report, case number 2355, paragraph 469; 346th report, case number case number 2488, paragraph 1328; 348th report, case number 2519, paragraph 1141; 349th report, case number 2552, paragraph 421; and 364th report, case number 2907, paragraph 670.

public services, as the restriction on the right to strike must be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.[138]

104. Also with regard to essential services, the Court would stress that the states must seek possible alternatives for cases where a minimum service could be an appropriate solution to avoid total prohibition of the strike while still guaranteeing users' basic needs or the safe operation of facilities providing a service considered "essential."[139] It would emphasize that such minimum services should be limited to operations necessary to meet the population's basic needs or minimum service requirements, with the guarantee that the scope of minimum services not be so expansive as to render the strike impossible. Negotiations on minimum services must take place before a labor conflict arises, so that all stakeholders (public authorities, worker organizations, and employer organizations) can remain as objective and clear-headed as possible.

105. Finally, this Court finds it allowable for states to set forth certain prior conditions that need to be met, as defined through the process of collective bargaining, before a decision is made to activate the mechanism of a strike to defend workers. Such conditions, however, should be reasonable and in no event should undercut the essential content of the right to strike or the autonomy of trade union organizations.[140]

E. On the specific questions raised by the Inter-American Commission

106. This Court reiterates that freedom of association, collective bargaining, and the right to strike are rights incorporated into Article 26 of the Convention, as they derive from Article 45, subparagraphs (c) and (g) of the OAS Charter (*supra,* par. 48). Although each one is a right on its own merits, this Court would stress that they are interdependent and indivisible.[141] As such, they are subject to the general obligations established in Articles 1(1) and 2 of the Convention, which set forth duties to respect and guarantee the rights recognized therein without discrimination, and to adopt measures under domestic law to give effect to those rights and freedoms.

107. The Court has repeatedly held, since its earliest judgments, that the first obligation assumed by the states parties under Article 1(1) is "to respect the rights and freedoms" recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the state. The protection of human rights, particularly the civil and political rights set forth in the Convention,

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138 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 856. *Cf.* Committee on Freedom of Association, 340th report, case number 2415, paragraph 1256; 344th report, case number 2484, paragraph 1095; 349th report, case number 2552, paragraph 421; 350th report, case number 2543, paragraph 726; 353rd report, case number 2631, paragraph 1357; 356th report, case number 2654, paragraph 376; 359th report, case number 2383, paragraph 182; 367th report, case number 2885, paragraph 384, case number 2929, paragraph 637; 370th report, case number 2956, paragraph 142; and 371st report, case number 2203, paragraph 534.

139 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 867. *Cf.* Committee on Freedom of Association, 344th report, case number 2461, paragraph 313, case number 2484, paragraph 1094; 348th report, case number 2433, paragraph 48; 349th report, case number 2545, paragraph 1153; 350th report, case number 2543, paragraph 727; 354th report, case number 2581, paragraph 1114; 356th report, case number 2654, paragraph 371; 362nd report, case number 2741, paragraph 768, case number 2841, paragraph 1041; 371st report, case number 2988, paragraph 851; 372nd report, case number 3022, paragraph 614; and 377th report, case number 3107, paragraph 240.

140 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, par. 789-790. *Cf.* Committee on Freedom of Association, 343rd report, case number 2432, paragraph 1026; 346th report, case number 2488, paragraph 1331; 357th report, case number 2698, paragraph 225; 359th report, case number 2203, paragraph 524; 371st report, case number 2988, paragraph 850; and 375th report, case number 2871, paragraph 231.

141 *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2009 Series C No. 198, par. 101, and *Case of Lagos del Campo v. Peru*, *supra,* par. 141.

Document No. 324

IACtHR, Case of the Former Employees of the Judiciary v. Guatemala (2021), paras 106–127

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA

JUDGMENT OF NOVEMBER 17, 2021

(*Preliminary Objections, Merits and Reparations*)

In the case *of the Former Employees of the Judiciary v. Guatemala,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Elizabeth Odio Benito, President
Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge
Ricardo Pérez Manrique, Judge

also present,

Pablo Saavedra Alessandri, Registrar
Romina I. Sijniensky, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or the "Rules"), delivers this judgment, structured as follows:

104. The Court also finds it pertinent to recall that there are two types of obligations derived from the recognition of ESCER, which are protected by Article 26 of the Convention: those that are immediately enforceable and those of a progressive nature. In relation to the former (immediately enforceable obligations), the Court recalls that the States must adopt effective measures to ensure access, without discrimination, to the benefits recognized by the ESCER, and in general to advance toward their full realization. With regard to the latter (obligations of a progressive nature), progressive realization means that the States Parties have the specific and constant obligation to advance as rapidly and efficiently as possible toward the full realization of those rights, subject to available resources, through legislation or other appropriate means. There is also an obligation of non-retrogression with respect to the realization of the rights achieved. Thus, the conventional obligations of respect and guarantee, as well as the adoption of measures of domestic law (Articles 1(1) and 2), are essential to achieve their effectiveness.[109]

105. In consideration of the foregoing, this case does not require an analysis of State conduct related to the progressive development of the ESCER; rather, the Court must determine whether the State guaranteed the protection of such rights to the 65 former employees who were dismissed from the Judiciary as a result of the strike. In other words, the Court must determine whether the State fulfilled its immediately enforceable obligations with respect to the right to work and the right to strike. It is therefore incumbent upon this Court to rule on the State's conduct with respect to compliance with its obligations to guarantee the right to strike and the right to work and to job security.

B.2. The right to strike, in relation to the right to freedom of association and freedom to organize

106. In its advisory role, this Court has already established that the right to strike is one of the fundamental human rights of workers, which may be exercised independently of their organizations.[110] This is specified in Article 45(c) of the OAS Charter (right to strike "by the workers"), and is indicated by the deliberate placement of its wording separately from the rights of trade union associations, in Articles 8(b) of the Protocol of San Salvador and 8(1)(d) of the ICESCR.[111] It is also enshrined in Article 27 of the Inter-American Charter of Social Guarantees ("workers have the right to strike"). Otherwise, the negative dimension of freedom of association in its individual aspect could be impaired. It is also a right of trade associations in general.

107. The Court notes that although the right to strike is not expressly recognized in the ILO Conventions, it is significant that Article 3 of Convention 87 on Freedom of Association and Protection of the Right to Organize, to which Guatemala is a party, recognizes the right of workers' organizations to "organize […] their activities in full freedom and to formulate their program of action." In that regard, the Committee on Freedom of Association has recognized the importance of the right to strike as "an intrinsic corollary to the right to organize protected by Convention No. 87."[112]

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[109] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 190, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 66.

[110] *Cf. Rights to Freedom to Organize, Collective Bargaining, and Strike, and their Relation to other Rights, with a Gender Perspective.* Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 95.

[111] The positioning of a provision may be a factor of great importance for its interpretation. *Cf. Enforceability of the Right to Reply.* Advisory Opinion OC-5/85 7/86 of August 29, 1986. Series A No. 5, para. 47, and Advisory Opinion OC-27/21, *supra*, para. 95.

[112] *Cf.* Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018, para. 754. Cf. Committee on Freedom of Association, Report 344, Case No. 2471, paragraph 891; Report 346, Case No. 2506,

108. The Court also notes that, in addition to being widely recognized in the international *corpus iuris*, the right to strike has also been recognized in the constitutions and legislation of the OAS Member States.[113] In this sense, it can be considered as a general principle of international law. In particular, the Constitution of Guatemala states:

> Article 104. Right to strike and work stoppage. The right to strike is recognized and is to be exercised in accordance with the law, after all conciliation procedures have been exhausted. These rights may be exercised only for reasons of an economic or social order. The laws shall establish the cases and situations in which a strike or work stoppage shall not be allowed.[114]

109. According to the Committee on Freedom of Association, a strike is generally defined as "a temporary work stoppage (or slowdown) willfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances."[115] The Court agrees with this definition, and considers that the right to strike is one of the fundamental rights of workers and their organizations, as it constitutes a legitimate means of defending their economic, social and professional interests. It is a measure exercised by workers as a means of exerting pressure on the employer in order to correct an injustice or to seek solutions to economic and social policy issues and problems arising in companies that are of direct interest to workers.[116] In this regard, the European Court has described the strike as the "most powerful" instrument for the protection of labor rights.[117]

110. The Inter-American Court has already mentioned the close links existing between freedom of association, freedom to organize and the right to strike. In this sense, the Court has emphasized that the relationship between freedom of association and freedom to organize is akin to one of genus and species, since the former recognizes the right of individuals to create organizations and act collectively in pursuit of legitimate goals, based on Article 16 of the American Convention, while the latter should be understood in relation to the specificity of the activity and the importance of the objective pursued by union activities, as well as its specific protection derived from Article 26 of the Convention and Article 8 of the Protocol of San Salvador. Similarly, it has indicated that the protection of the rights to collective bargaining and to strike, as essential tools of the rights of association and freedom to organize, is fundamental.[118]

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paragraph 1076, Case No. 2473, paragraph 1532; Report 349, Case No. 2552, paragraph 419; Report 354, Case No. 2581, paragraph 1114; and Report 362, Case No. 2838, paragraph 1077.

113 *Cf.* Constitution of the Argentine Nation, Article 14 bis; Constitution of the Plurinational State of Bolivia, Article 53; Constitution of Brazil, Article 9; Constitution of the Republic of Chile, Article 16; Constitution of Colombia, Article 56; Constitution of the Republic of Costa Rica, Article 61; Constitution of the Republic of Ecuador, Article 35.10; Constitution of El Salvador, Article 48; Constitution of Guatemala, Article 104; Constitution of the Republic of Honduras, Article 128; Constitution of the United Mexican States, Article 123 A XVIII; Constitution of the Republic of Nicaragua, Article 83, Constitution of Panama, Article 69; Constitution of the Republic of Paraguay, Article 98; Constitution of Peru, Article 28; Constitution of the Dominican Republic, Article 62(6), and Constitution of the Oriental Republic of Uruguay, Article 57, Canadian Charter of Rights and Freedoms, signed in 1982, Article 2.b.

114 Constitution of the Republic of Guatemala of May 31, 1985. Text available at: https://www.congreso.gob.gt/assets/uploads/congreso/marco_legal/ab811-cprg.pdf.

115 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 783; *Cf.* Committee on Freedom of Association, Report 358, Case No. 2716, paragraph 862.

116 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 758; *Cf.* Committee on Freedom of Association Report 344, Case No. 2496, paragraph 407; Report 353, Case No. 2619, paragraph 573; Report 355, Case No. 2602, paragraph 668; Report 357, Case No. 2698, paragraph 224; Report 371, Case No. 2963, paragraph 236, Case No. 2988, paragraph 852; and Report 378, Case No. 3111, paragraph 712.

117 ECHR, *Hrvatski Liječnički sindikat v. Croatia*, No. 36701/09. Judgment of November 27, 2014, para. 59.

118 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 121.

111. With respect to freedom of association, Article 16(1) of the American Convention recognizes the right of persons to associate freely for ideological, religious, political, economic, labor, cultural, sporting or any other purpose. This Court has pointed out that the right of association enables individuals to create or participate in entities or organizations for the purpose of acting collectively in pursuit of the most diverse objectives, as long as these are legitimate.[119] The Court has established that those under the jurisdiction of the States Parties have the right to associate freely with other persons, without any intervention by the public authorities that could limit or impair the exercise of the respective right. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.[120] The Court has likewise noted that freedom of association also gives rise to positive obligations to prevent attacks on it, to protect those who exercise it and to investigate violations of that freedom; this requires the adoption of positive measures, even in the sphere of relations between individuals, should the case merit it.[121]

112. In labor matters, this Court has established that freedom of association protects the right to form trade union organizations and to implement their internal structure, activities and action programs, without intervention by the public authorities that would limit or hinder the exercise of the respective right.[122] At the same time, this freedom presupposes that each person may determine, without coercion, whether he or she wishes to join the association.[123] In addition, the State has the duty to ensure that individuals can freely exercise their freedom of association without fear that they will be subjected to violence of any kind; otherwise, the ability of groups to organize for the protection of their interests could be diminished.[124] In this regard, the Court has emphasized that freedom of association in labor matters "is not exhausted with the theoretical recognition of the right to form [trade unions], but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom."[125]

113. With regard to the right to freedom of association, Article 45(c) and (g) of the OAS Charter expressly states that employers and workers may associate freely for the defense and promotion of their interests, including the right of workers to collective bargaining and to strike. Likewise, Article XXII of the American Declaration recognizes the right of every person "to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

114. Thus, the Court has established that the protection of freedom of association fulfills an important social function, since the work of trade unions makes it possible to safeguard or improve the working and living conditions of workers, and to that extent its protection enables the realization of other human rights. In this sense, the protection of the right to collective bargaining

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119 *Cf. Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 6, 2009. Series C No. 200, para. 169 and Advisory Opinion OC-27/2, *supra*, para. 121.

120 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156 and Advisory Opinion OC-27/21, *supra*, para. 121.

121 *Cf. Case of Huilca Tecse v. Peru. Merits, reparations and costs.* Judgment of March 3, 2005. Series C No. 121, para. 76, and Advisory Opinion OC-27/21, *supra*, para. 121.

122 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156 and Advisory Opinion OC-27/21, *supra*, para. 71.

123 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 71.

124 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 77, and Advisory Opinion OC-27/21, *supra*, para. 71.

125 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 70, and Advisory Opinion OC-27/21, *supra*, para. 71.

and strike, as essential tools of the rights of association and freedom to organize, is fundamental.[126]

115. In relation to the foregoing, this Court finds that the sphere of protection of the right to freedom of association in labor matters is not only subsumed to the protection of trade unions, their members and their representatives. Trade unions and their representatives enjoy specific protection for the effective performance of their functions, since, as this Court has established in its jurisprudence,[127] and as stated in various international instruments, [128] including Article 8 of the Protocol of San Salvador, in trade union matters, freedom of association is of the utmost importance for the defense of the legitimate interests of workers, and is part of the *corpus juri*s of human rights.[129]

116. In the instant case, given the failure of direct negotiations to reach a new collective agreement on working conditions, the STOJ initiated an economic-social dispute before the First Chamber of Appeals of Labor and Social Welfare. The conciliation procedure established in the Labor Code was followed, but concluded on February 15, 1996, without the parties reaching an agreement. Given this impasse in the negotiations, the STOJ filed a brief before the First Chamber of the Court of Appeals requesting that the General Labor Inspectorate be ordered to proceed with the count to determine whether the requirements to hold a legal strike under the Labor Code were met.

117. Indeed, according to Article 241 of the Labor Code in force at the time of the facts, in order to declare a strike lawful, the workers must "constitute at least two-thirds of the persons working in the respective company or production center, who have initiated their labor relationship prior to the collective economic or social dispute." Moreover, pursuant to Article 4 of the Law of Unionization and Strike Regulations for State Employees, in its version in force at the time of the facts, for State workers to exercise the right to strike, the law established the prior requirement of having exhausted the direct procedure and subparagraph c) stated that "No strike may be carried out when it is intended to affect the essential services referred to in Article 243 of the Labor Code, Decree 1441 of the Congress of the Republic and others established by law, as well as those ordered by the Executive in compliance of the Public Order Law."[130]

118. In its advisory role, this Court has already pointed out that the criterion of legality of the strike is a central element with respect to the possibility of exercising the right to strike. Thus, the prior terms and conditions established by law for a strike to be considered lawful should not be complicated to the point of making it impossible, in practice, to hold a legal strike. On the other hand, this Court considers it possible for States to establish compliance with certain preconditions within the framework of collective bargaining before resorting to the strike mechanism in defense

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126 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 124.

127 *Cf. Case Baena Ricardo et al. v. Panama, supra*, para. 156, and Advisory Opinion OC-27/21, *supra*, para. 72.

128 *Cf.* ILO. Convention No. 87 Freedom of Association and Protection of the Right to Organize, June 17, 1948 and Convention No. 98 Right to Organize and Collective Bargaining, of June 8, 1949.

129 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 72.

130 Article 243 of the Labor Code established as essential services: "The following workers may not go on strike: a) workers of transportation companies, while they are on a journey and have not completed it. b) workers in clinics, hospitals, hygiene and public cleaning services; and those who work in companies that provide power, lighting, telecommunications and water processing and distribution services for the population, unless the necessary personnel is provided to avoid the suspension of such services, without causing grave and immediate harm to health, safety and public economy; c) the State's security forces […]".

of workers. However, these conditions must be reasonable and must not affect, in any way, the essential content of the right to strike or the autonomy of trade union organizations.[131]

119. In this case, the requirements for the legality of a strike by State workers were: 1) the exhaustion of direct negotiations; 2) that the strike be held for demands of an economic or social nature; 3) that it not affect essential services and 4) compliance with the legal requirements, in this case, with the provisions of Article 241 of the Labor Code in force at the time, which implied a minimum participation of at least two-thirds of the workers in the strike. The STOJ complied with the first requirements and, in order to comply with the provisions of the Labor Code, on February 16, 1996, it asked the competent judicial authority to order the General Labor Inspectorate to carry out the count. This request was granted. Despite the fact that the authorities rejected the various appeals attempted by the State against the decision to order the count (*supra* para. 41), it was never carried out. In fact, the Inspector General's Office consulted the First Chamber to determine whether the count should proceed, but on February 26, 1996, the First Chamber ordered the suspension of the count until the challenges were resolved.[132] In view of the material impossibility of complying with the legal requirements, the STOJ held a *de facto* strike from March 19 to April 2, 1996.

120. Thus, in the instant case, the declaration of illegality was linked to the fact that the STOJ did not comply with this requirement because the General Labor Inspectorate was unable to carry out the count. However, the count was not carried out for reasons beyond the Union's control. It should be noted that, in this case, both the employer and the authorities in charge of implementing and verifying compliance with the requirements form part of the State. Although the State-employer had the right to oppose the decision to carry out the count of the strike participants ordered by the First Chamber and executed by the General Labor Inspectorate, it should be noted that, once the final decision rejecting these appeals was issued, the count was not carried out and the case moved directly to the consideration of the motion of illegality filed by the State-employer itself to have the strike declared illegal. Between the two decisions - the final decision on the count and the filing of the motion for the declaration of illegality - more than twenty days passed, during which time the count could have been carried out.

121. With regard to the excessive complexity and lengthy delays in the prior procedures required to exercise the right to strike, the ILO's oversight bodies have stressed that the legal mechanisms for declaring a strike should not be so complex or cause such long delays that, in practice, it becomes impossible to carry out a lawful strike or that the action loses all its effectiveness. Similarly, the Committee on Economic, Social and Cultural Rights has brought to the attention of the States that the lengthy procedure required to declare a strike legal may constitute a restriction of the right recognized in Article 8(1) of the International Covenant on Economic, Social and Cultural Rights.[133]

122. Given that more than two years had passed between the start of the dispute in 1994 and the strike action, during which time all attempts at direct negotiation with the State-employer failed,[134] it may be concluded that the only tool left to the workers was the strike, as a last resort.

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131 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 789-790. Cf. Committee on Freedom of Association, Report 343, Case No. 2432, paragraph 1026; Report 346, Case No. 2488, paragraph 1331; Report 357, Case No. 2698, paragraph 225; Report 359, Case No. 2203, paragraph 524; Report 371, Case No. 2988, paragraph 850; and Report 375, Case No. 2871, paragraph 231.

132 *Cf.* Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 of February 26, 1996 (evidence file, folios 41 and 41).

133 CESCR. Compilation of final observations of the Committee on Economic, Social and Cultural Rights on countries of Latin America and the Caribbean (1989-2004).

134 In the results of the verification of the complaint filed by the STOJ, MINUGUA considered that "successive legal challenges and motions filed by the Attorney General's Office and the Supreme Court of Justice prevent, in fact, the

Therefore, the numerous appeals filed by the State against the decision authorizing the count by the General Labor Inspectorate, and its lack of diligence in implementing that decision, constituted an arbitrary obstruction by the State of the exercise of the right to strike by the former workers of the Judiciary.

123. With respect to the violation of freedom of association and freedom to organize, this Court notes that neither the Commission nor the representative expressly alleged the violation of these rights in this case. However, under the *iura novit curia* principle,[135] and given the close relationship that exists between the aforementioned rights (see *supra* paras. 110 to 115) the Court will rule on these violations in connection with the right to strike.

124. Indeed, in the instant case, the Court finds that a significant number of the alleged victims were Judiciary workers who, in the exercise of their rights to freedom of association and freedom to organize, had joined the STOJ.[136] Between March 19 and April 2, 1996, members of the STOJ went on strike, which was declared illegal and as a result of this declaration, the 65 alleged victims were dismissed, including some who were union leaders and who, therefore, enjoyed union privilege (immunity from dismissal) established in Article 223 of the Labor Code. This Court has already stated that trade unions and their representatives enjoy specific protection for the effective performance of their functions, since freedom of association in trade union matters is of the utmost importance for the defense of the legitimate interests of workers and is part of the *corpus juris* of human rights.[137] Therefore, the Court concludes that the declaration of illegality of the strike not only violated the right to strike but also the right to freedom of association and freedom to organize of the 65 alleged victims in this case.

125. Finally, in view of the requirement established by Guatemalan legislation at the time of the facts that a count had to be carried out and that this must reflect the participation of at least two-thirds of the workers, the Court deems it appropriate to analyze whether these preconditions for opting for the strike mechanism are reasonable and do not affect the essential content of the right to strike, freedom of association and freedom to organize. In this regard, the ILO Committee on Freedom of Association has already commented on the impact of this requirement on the right to strike and on union activities:

> "With regard to the majority vote required by one law for the calling of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalls the conclusions of the Committee of Experts (…) that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of such a nature as to restrict the rights of these organizations, contrary to Article 3 of the Convention (Convention 87)."[138]

126. Indeed, the requirement of such a high rate of participation in the action makes a legal strike impossible in practice, so that its imposition implies an arbitrary restriction of the right to strike, of freedom of association and of freedom to organize.

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collective bargaining from materializing or delayed the procedure required to implement it." (Letter from MINUGUA to Víctor Hugo Godoy, president of COPRODEH of March 15, 2000, evidence file folio 625).

135 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 163 and *Case of González et al. v. Venezuela. Merits and reparations.* Judgment of September 20, 2021. Series C No. 436, para. 144.

136 According to the information provided by the Commission, 51 of the 65 alleged victims were members of the STOJ. Five expressly stated that they were not members and there is no information with respect to nine of them.

137 *Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 72.

138 ILO. Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 805.

127. Consequently, the Court considers that the Guatemalan State is responsible for the violation of the right to strike, freedom of association and freedom to organize recognized in Articles 16 and 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the 65 former employees of the Judiciary listed in the Single Annex.

B.2. The right to work and to job security

128. With regard to the specific labor rights protected by Article 26 of the American Convention, the Court has already determined that the wording of said article indicates that these rights are derived from the economic, social, educational, scientific and cultural standards contained in the OAS Charter.[139] In this sense, Articles 45(b) and (c),[140] 46,[141] and 34(g)[142] of the Charter establish that "[w]ork is a right and a social duty" and that this should be performed with "fair wages, employment opportunities, and acceptable working conditions for all." These articles also establish the right of workers to "associate themselves freely for the defense and promotion of their interests." They also require the State to "harmonize the social legislation" for the protection of such rights. In its Advisory Opinion OC-10/89, the Court indicated that:

> […] The Member States […] have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied, as far as human rights are concerned, without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.[143]

129. In this regard, Article XIV of the American Declaration establishes that "[e]very person has the right to work, under proper conditions, and to follow his vocation freely." This provision is relevant in defining the scope of Article 26, given that "the American Declaration constitutes, where applicable and in relation to the OAS Charter, a source of international obligations."[144] Furthermore, Article 29(d) of the American Convention expressly establishes that "[n]o provision of this Convention may be interpreted as: […] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have."

130. The Committee on Economic, Social and Cultural Rights, in General Comment No. 18 on the right to work, has stated that this right "also implies the right not to be unfairly deprived of

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139 *Cf. Case of Lagos del Campo v. Peru, supra*, para. 143, and *Case of Vera Rojas et al. v. Chile, supra,* para. 33.

140 Article 45 of the OAS Charter. - The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: […] b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws […].

141 Article 46 of the OAS Charter. - The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

142 Article 34(g) of the OAS Charter. - The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: […] g) Fair wages, employment opportunities, and acceptable working conditions for all.

143 Advisory Opinion OC-10/89, *supra*, para. 43.

144 Advisory Opinion OC-10/89, *supra*, paras. 43 and 45.

Document No. 325

Constitutional Court of the Russian Federation, On the case concerning the verification of constitutionality of article 12 of the Law of the USSR of 9 October 1989 “On the Order of Settlement of Collective Labour Disputes (Conflicts)” (1995)

Constitutional Court of the Russian Federation, On the case concerning the verification of constitutionality of Article 12 of the Law of the USSR of 9 October, 1989 “On the Order of Settlement of Collective Labour Disputes (Conflicts)”, 17 May 1995

Constitution of the Russian Federation

Article 15, paragraph 4

Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.

Article 17, paragraph 1

In the Russian Federation human and civil rights and freedoms shall be recognized and guaranteed according to the universally recognized principles and norms of international law and this Constitution.

Country:
RUSSIAN FEDERATION

Subject:
Right to strike

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaty[1]

Law restricting the exercise of the right to strike/ Institution of proceedings before the Constitutional Court for unconstitutionality of the law/ Analysis of the relevant national and international provisions/ Use of international law as a guide for interpreting domestic law

The flight personnel of several airlines had gone on strike, but the strike had been ruled illegal by the ordinary courts, which held that it was against the law on the procedures for settling labour disputes in Russia.[2] Proceedings were instituted before the Constitutional Court to have the law in question declared unconstitutional.

The Constitutional Court referred first of all to the provisions of the Constitution, which recognized the legitimacy of the right to strike but authorized the legislator to restrict it for certain categories[3] and added that these Constitutional provisions were compatible with international law and that the latter was intended to serve as a guide for the legislator for determining any restrictions which might be made to the right to strike:

“Nor does the restriction of the right to strike contradict the generally accepted principles and rules of international law. Thus, proceeding from the regulations of the International Covenant on Economic, Social and Cultural Rights, the prohibition of the right to strike is admissible with regard to persons who are the complement of the armed forces, police and administration of the state (part two of Article 8),[4] and with regard to other persons the restrictions are possible if they are needed in the democratic society in the interests of state security or social order or for the protection of the rights and freedoms of others (paragraph “c” of part one of Article 8). In addition, the international legal acts on human rights ascribe the regulation of the right to strike to the sphere of internal legislation. But this legislation must not go beyond restrictions permitted by these acts.”

Having considered the national and international sources of law, the Constitutional High Court held that any restriction of the flight personnel’s right to strike was illegal. The offending article in the legislation was unconstitutional, however, in that it did not introduce adequate differences between the various categories of

personnel working in civil aviation and thus excessively extended the scope of the restriction of the right to strike.

The Constitutional Court urged the Federal Assembly of the Russian Federation to reword the article in the law pertaining to restriction of the right to strike, thereby taking account of the relevant articles of the Constitution[5] and the generally accepted principles and rules of international law in order to determine the extent of any restrictions that might be made to the right to strike.

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[1] International Covenant on Economic, Social and Cultural Rights, 1966.

[2] Law of 9 October 1989 on the Settlement of Collective Labour Disputes.

[3] Article 37(4) of the Constitution of the Russian Federation: “The right of individual and collective labour disputes with the use of the methods for their resolution, which are provided for by federal law, including the right to strike, shall be recognized.”

[4] Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights: “1. The States Parties to the present Covenant undertake to ensure: (…) (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.”

Article 8(2) of the International Covenant on Economic, Social and Cultural Rights: “This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.”

[5] Article 55(2) of the Constitution of the Russian Federation: “No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation.”

Article 55(3) of the Constitution of the Russian Federation: “Human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the state.”

Full text of the decision

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Document No. 326

Constitutional Court of South Africa, South African National Defence Union v. Minister of Defence, Case No. CCT 27/98 (1999)

Constitutional Court of South Africa, South African National Defence Union v. Minister of Defence, 26 May 1999, Case No. CCT 27/98

Country:
SOUTH AFRICA

Subject:
Right to strike , Freedom of association

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaties[1]

Constitutionality of national provisions prohibiting freedom of association to the members of the armed forces/ Interpretation of the national Constitution in the light of ILO Conventions/ Use of international law as a guide for interpreting domestic law

The South Africa Constitutional Court had to determine whether the provisions prohibiting members of the armed forces from participating in public protest action and from joining trade unions were restraining constitutional rights. If it did, the Court would have to determine whether that restriction was justified.

Article 23(2) of the National Constitution states:

“Every worker has the right: 1) to form and join a trade union 2) to participate in the activities and programs of a trade union 3) to strike.”

In order to decide if the law was restricting rights protected by the Constitution, the Court had to determine whether it could be said that members of the armed forces were “workers” as contemplated by section 23(2) of the Constitution. To interpret Article 23 of Constitution, the Court relied on ILO Conventions and Recommendations:

“Section 39 of the Constitution provides that when a court is interpreting chapter 2 of the Constitution, it must consider international law. In my view, the conventions and recommendations of the International Labour Organization (the ILO), one of the oldest existing international organizations, are important resources for considering the meaning and scope of “worker” as used in section 23 of our Constitution.”

The Court referred to Articles 2[2] and 9(1)[3] of ILO Convention No. 87 and concluded that:

“It is clear from these provisions, therefore, that the Convention does include “armed forces and the police” within its scope, but that the extent to which the provisions of the Convention shall be held to apply to such services is a matter for national law and is not governed directly by the Convention.”

Noting that ILO Convention No. 98 adopted the same approach, the Constitutional Court concluded the following:

“The ILO therefore considers members of the armed forces and the police to be workers for the purposes of these Conventions, but considers that their position is special, to the extent that it leaves it open to member states to determine the extent to which the provisions of the Conventions should apply to members of the armed forces and the police.”

Adopting the same approach as of ILO Conventions Nos. 87 and 98, the Court considered that the word “worker” of Article 23(2) of the Constitution should be interpreted to include members of armed forces. However, their constitutional rights protected by this Article could be limited by national legislations, as long as that limitation was reasonable and justifiable in an open and democratic society as provided in section 36 of the Constitution.

The Constitutional Court of South Africa concluded that the total ban on trade unions in the armed forces was clearly going beyond what is reasonable and justifiable to achieve the legitimate State objective of a disciplined military force. Therefore, the Court declared that the national provision was unconstitutional. On the other hand, the Court decided that the prohibition of the right to strike to the armed forces did not violate the Constitution.

[1] ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87); ILO Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98).

[2] Article 2 of Convention No. 87: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organizations of their own choosing without previous authorization.”

[3] Article 9(1) of Convention No. 87: “The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.”

Full text of the decision

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Document No. 327

Constitutional Court of Colombia, Fourth Appellate Supervisory Chamber, Sindicato de las Empresas Varias de Medellín v. Ministry of Labour and Social Security, the Ministry of Foreign Relations, the Municipio of Medellin and Empresas Varias de Medellín E.S.P., T-568/99 (1999)

Constitutional Court, Fourth Appellate Supervisory Chamber, Sindicato de las Empresas Varias de Medellín v. Ministry of Labour and Social Security, the Ministry of Foreign Relations, the Municipio of Medellin and Empresas Varias de Medellín E.S.P., 10 August 1999, T-568/99

Political Constitution of the Republic of Colombia

Article 53

(...) The international labour Conventions, duly ratified, form part of domestic legislation (…).

Article 93, paragraph 1

The international treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in domestic order. The rights and duties consecrated in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Country:
COLOMBIA

Subject:
Dismissal , Protection against discrimination in employment and occupation , Right to strike

Role of International Law:
Direct resolution of a dispute on the basis of international law

Type of instruments used:
Ratified treaties;[1] Instruments not subject to ratification;[2] Work of international supervisory bodies[3]

Right to strike/ Protection against anti-union discrimination/ Anti-union dismissals as the result of the declaration of illegality of a strike by the administrative authority/ Direct resolution of a dispute on the basis of international law/ Direct application of international law to waive a national provision less protective towards workers

Workers made application for jurisdiction for having been dismissed for participating in a strike that was declared illegal by the administrative authority, demanding reintegration into their jobs.

This case had already been studied by the ILO Committee on Freedom of Association, which made a recommendation urging the Government to reintegrate the workers into their jobs, workers who were dismissed for having participated in the strike mentioned earlier.[4] In order to justify their claim, the applicants submitted the recommendation of the Committee on Freedom of Association.

However, the request was refused and deemed unfair, arguing that the trade union had already exhausted all the ordinary instances. Furthermore, the Court denied it, based on the non-obligatory nature of the application of the ILO Recommendations. Faced with this situation, the workers insisted on their claim and made this application for protection.

In order to determine whether dismissal for participating in a strike that had been declared illegal by the administrative authority would constitute anti-union dismissals in violation of the National Constitution,[5] the Constitutional Court applied ILO Conventions Nos. 87 and 98.[6] The Court considered that when the administrative authority declared the strike illegal, the workers were deprived of the guarantee of impartiality and protection against anti-union discrimination.

At the same time, the Court statted that “(…) *[The Committee on Freedom of Association]* is the body that can make recommendations of binding character according to the norms that govern the Organization.”

Likewise, it added that “Colombia is obligated, in virtue of the position as State Party to the ILO Constitution, to respect the recommendations of the Governing Body.”

The Court, in order to base its decision concerning the anti-union dismissal, stated the following:

"(…) the trade union was excluded from the verification of the strike that was carried out by the Ministry for Labour and Social Security with the participation of the employer, but not the workers. (…) that action violates the right of participation of the workers affiliated with the trade union (of both those that participated in the strike as well as those that did not) and of the applicant trade union, as well as ILO Conventions Nos. 87 and 98, which form part of the block of constitutionality.

(…) the ILO Constitution and Conventions Nos. 87 and 98 concerning freedom of association (treaty and conventions duly ratified by Congress, which describe rights that cannot be suspended, even under states of emergency), shall also be included, in addition to the articles of the Universal Declaration of Human Rights, the International Covenant of Rights Economic, Social and Cultural and the American Convention on Human Rights. They were faced with Articles 430 and 450 of the Labour Code on which the dismissal was based and, of course, the recommendation of the International Labour Organization's Committee on Freedom of Association."

As a result, the Constitutional Court of Colombia applied ILO Conventions Nos. 87 and 98, as well as the recommendation of the Committee on Freedom of Association in order to determine violation of the National Constitution. On this basis, the Court declared the dismissals null and ordered reintegration of the dismissed workers as well as the recognition of the salaries and benefits that they did not receive.

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[1] ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87); ILO Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98); International Covenant on Economic, Social and Cultural Rights, 1966; American Convention on Human Rights ("Pact of San José, Costa Rica"), 1969.

[2] ILO Constitution, 1919; Universal Declaration of Human Rights, 1948.

[3] ILO Committee on Freedom of Association.

[4] Complaint against the Government of Colombia submitted by the Trade Union of Workers of Medellín Municipal Enterprises (EEVVMM) (See ILO: *Report of the Committee on Freedom of Association*, Case No. 1916, Report No. 309, *Official Bulletin*, Vol. LXXXI, 1998, Series B, No. 1, para. 105).

[5] Articles 39 and 56 of the Constitution of Colombia expressly establish the right of association, formation of trade unions and striking, while Articles 53 and 93 of the Constitution expressly state that international labour Conventions form part of domestic legislation granting precedence in the domestic order to the international treaties concerning human rights.

[6] According to the Constitution of Colombia, duly ratified international labour Conventions form part of domestic legislation (Article 53) and the international treaties and conventions ratified by Congress, that recognize human rights and prohibit their limitation in states of emergency, shall prevail in domestic order (Article 93). As can be seen, the treaties on human rights are integrated into domestic regulation with higher hierarchy.

Full text of the decision

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Document No. 328

Constitutional Court of South Africa, NUMSA v. Bader Bop, Case No. CCT 14/02 (2002)

Constitutional Court of South Africa, NUMSA v. Bader Bop, 13 December 2002, Case No. CCT 14/02

Country:
SOUTH AFRICA

Subject:
Right to strike , Freedom of association , Collective bargaining

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaties;[1] Work of international supervisory bodies[2]

Means of action of minority trade unions/ Importance of ILO Conventions and the proceedings of the ILO supervisory bodies in the interpretation of national law/ Use of international law as a guide for interpreting domestic law

A minority trade union wanted to call a strike in order to exercise the right to have a works steward. South African legislation provided that trade unions which were sufficiently representative could seek to assert their right to organize through mediation, arbitration or strike, but the law was silent as to the means of action of minority trade unions. The company had brought an action to have the strike banned. According to the Appeal Court's interpretation of the Labour Code, a minority union did not have the right to call a strike. The union brought the matter before the Constitutional Court.

Before considering the merits of the case the Constitutional Court defined the rules of law applicable to the dispute, and thereby found that South African trade union law was intended to fulfil South Africa's obligations as a member State of the International Labour Organization and that national legislation should therefore be interpreted in compliance with the State's obligations under public international law. The Court considered in this instance that ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining were to be taken into account.[3]

After referring to the relevant articles of these two Conventions, the Constitutional Court explained the functions of the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations. The High Court found that:

"Its decisions [of the ILO Committee on Freedom of Association] are therefore an authoritative development of the principles of freedom of association contained in the ILO Conventions. The jurisprudence of these committees too will be an important resource in developing the labour rights contained in our Constitution."

The Court then examined the "jurisprudence" of the two supervisory bodies pertaining to strikes and the means of action available to trade unions and pointed out that:

"These principles culled from the case law of the two ILO committees are directly relevant to the interpretation both of the relevant provisions of the Act and of the Constitution."

In the Court's opinion, allowing minority unions means of action was more in conformity with the "jurisprudence" of the two ILO supervisory bodies. Furthermore, it found that this interpretation had the advantage that it did not restrict the rights protected by the Constitution.

The Court therefore held that the Labour Court's interpretation of the Labour Code was plausible but did not take sufficient account of the guidelines of international law:

"However, it (the tribunal) fails to take into account sufficiently the considerations that arise from the discussion of the ILO Conventions outlined above and, in particular, does not avoid the limitation of constitutional rights. The question we must answer, therefore, is whether the Act is capable of an interpretation that does avoid limiting constitutional rights."

The Constitutional Court consequently sought an interpretation of the law which limited infringements of constitutional rights and concluded that minority unions could seek to recover rights through collective bargaining. The Court held that:

"A better reading is to see section 20[4] as an express confirmation of the internationally recognized rights of minority unions to seek to gain access to the workplace, the recognition of their shop-stewards as well as other organizational facilities through the techniques of collective bargaining."

It was thus held that where employers and unions had the right to negotiate on an issue it was natural to assume that unions also had the right to strike on the same issue.

The Constitutional Court thus recognized that minority unions could seek to recover certain rights through collective bargaining and that, if the negotiations failed, they had the right to strike. The Court reversed the decision of the Appeal Court.

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[1] ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87); ILO Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98).

[2] ILO Committee of Experts on the Application of Conventions and Recommendations; ILO Committee on Freedom of Association.

[3] The Constitutional Court also mentioned ILO Convention on Workers' Representatives, 1971 (No. 135), and ILO Convention on Collective Bargaining, 1981, (No. 154) but did not rely on them.

[4] Section 20 of the Labour Act which forms part of Chapter III, Part A, on collective bargaining: "Nothing in this Part precludes the conclusion of a collective agreement that regulates organizational rights."

Full text of the decision

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Document No. 329

Constitutional Court of Peru, Juan José Gorriti and more than 5,000 citizens v. Congress of the Republic, Case No. 008-2005-PI/TC (2005)

Constitutional Court, Juan José Gorriti and more than 5,000 citizens v. Congress of the Republic of Colombia, 12 August 2005, Case No. 008-2005-PI/TC

Constitution of Peru

Article 3

The list of rights set out in this chapter does not exclude any others guaranteed by the Constitution, those of an analogous nature or based on the dignity of man, the principles of the sovereignty of the people, the democratic State of law and the republican form of government.

Article 55

Treaties ratified by Peru and in force form part of domestic law.

Article 56

Treaties must be adopted by Congress before their ratification by the President of the Republic, whenever they deal with the following subjects: 1. Human rights; 2. The nation's sovereignty, dominion or territorial integrity; 3. National defence; 4. Financial obligations of the Government.

Article 57, paragraph 2

Whenever a treaty affects constitutional provisions, it must be approved through the same procedure governing constitutional reform before being ratified by the President of the Republic.

Final transitional provision No. 4

Provisions concerning the rights and freedoms recognized by the Constitution are interpreted in accordance with the Universal Declaration of Human Rights and with treaties and international agreements dealing with the same issues and ratified by Peru.

Labour Procedure Law (No. 29497 of 2010)

Supplementary provision n°10

In accordance with the provisions of the fourth final and transitional provision of the Political Constitution of Peru, individual and collective labour rights shall be interpreted in accordance with the Universal Declaration of Human Rights and the relevant international treaties and agreements ratified by Peru, in addition to the consultation of the pronouncements of the supervisory bodies of the International Labour Organization (ILO) and the opinions or decisions adopted by international courts constituted according to treaties to which Peru is party.

Country:
PERU

Subject:
Right to strike , Freedom of association , Collective bargaining

Role of International Law:
Direct resolution of a dispute on the basis of international law

Type of instruments used:
Ratified treaties[1]

Freedom of association/ Collective bargaining/ Right to strike/ Direct resolution of a dispute on the basis of international law

During this process of unconstitutionality against Law No. 28175 “Framework Law on Public Employment”, the claimants argued that the aforementioned law contravened the Peruvian Constitution, since article 15 did not include in the list of rights of civil servants the rights to organize, collective bargaining and strike action. In its defence, the Congress of Republic of Peru argued that the fact that the law did not set out these rights did not mean that they had been disregarded, since these rights had been recognized by the Constitution and international conventions.

The Court concluded that there was no breach of the constitutional standards. The Court considered that the rights recognized by Law 28175 were not exhaustive and did not disregard the rights recognized by other legal provisions. The Court supported its argument using national and international standards, including ILO Convention No. 87 which, according to the Constitution, formed part of the legal system. In this regard, the Court pointed out that:

“Equally, in accordance with the Fourth Final and Transitory Disposition of the Supreme Law, international treaties on human rights must be applied when interpreting the rights and freedoms enshrined in the Constitution on labour matters. In effect, the labour rights of the public workers alluded to by the claimants must be interpreted in accordance with the provisions of Article 9 of Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Article 8 of the International Covenant on Economic, Social and Cultural Rights; [...] and others.”[2]

With regard to the case of the right to collective bargaining, the Court indicated that this right was subject to restrictions, a fact that was recognized by ILO Convention No. 151. In the case of Peru, collective bargaining between the state and civil servants was restricted by budgetary matters:

“Article 7 of the aforementioned Convention [No. 151] establishes that measures appropriate to national conditions shall be taken where necessary to encourage and promote full development and utilization of negotiation procedures between the public authorities concerned and employers’ organizations [...] In effect, as part of the national conditions referred to in ILO Convention No. 151, the Constitution establishes standards concerning the public budget [...] Thus, in the case of collective bargaining with civil servants, such negotiations should be carried out taking the constitutional restrictions which demand a balanced and fair budget into consideration”.[3]

In conclusion, making use of ILO Convention No. 87, the Court found that the law allowed the exercise of the right to freedom of association, collective bargaining and strike action by civil servants, although the right to collective bargaining was subject to constitutional restrictions, a fact that was in line with the provisions of ILO Convention No. 151.

[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); ILO Labour Relations (Public Service) Convention, 1978 (No. 151).

[2] P. 33 of the decision.

[3] P. 35 of the decision.

Full text of the decision

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Document No. 330

Bobo – Dioulasso Appeal Court, Social Chamber, Messrs Karama and Bakouan v. Société Industrielle du Faso (SIFA), No. 035 (2006)

Bobo – Dioulasso Appeal Court, Social Chamber, Messrs. Karama and Bakouan v. Société Industrielle du Faso (SIFA), 5 July 2006, No. 035

Constitution of Burkina Faso

Article 151

Treaties or agreements which have been duly ratified or adopted shall upon their publication have a higher authority than the laws, provided that each agreement or treaty is applied by the other party.

Country:
BURKINA FASO

Subject:
Right to strike

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaty;[1] Work of international supervisory bodies[2]

General strike/ Legality of the strike/ Reference to ILO Convention No. 87/ Use of international law as a guide for interpreting domestic law

On the initiative of several trade-unions in Burkina Faso, notice of a nationwide 48-hour strike by workers in the public and private sectors was given to the Head of State and the Director General of Employment, Labour and Social Security. Although their employer had been notified, two private-sector workers were dismissed for taking part in this strike.

When the Bobo-Dioulasso Labour Court ruled that these dismissals were legitimate, the two workers took their case to the Appeal Court, arguing that the strike in the private sector was a solidarity strike, legitimized by the public-sector strike it was supporting. Their employer claimed on the contrary that that the provisions of the Labour Code prohibited any strike not arising within the enterprise itself and that, in this case, the strike, which was motivated by external factors, was illegal.

The Appeal Court, having noted that the strike was a general national strike involving all sectors and concerning a number of grievances relating to wages, taxation and workers' rights, referred to ILO Convention No. 87. Explaining the basis for its reasoning, it pointed out, on the one hand, that:

"The principle of conformity of interpretation assumes that the legislator has not violated or does not intend to violate the spirit of the international treaties it has ratified"

And, on the other:

"That the judge is able to refer to the said international instruments and to experts' comments in the event of contradictions, insufficiencies, loopholes or backwardness in relation to the progress advocated by the treaties".

Applying these principles, the Appeal Court considered that the strike, which was a general strike based on professional and economic interests aiming to find solutions to issues of social policy, was legitimate and lawful in accordance with the statements of the Committee on Freedom of Association of the Governing Body of the ILO as expressed in its Digest of Decisions.[3]

The Court then ruled that, although the national legislator had not expressly provided a mechanism for initiating a strike in a case of this kind, the strike initiated in the private sector drew its legitimacy from the strike initiated in the public sector in conformity with national law. To support this analysis, the Court again referred to the statements of

the Committee on Freedom of Association of the ILO's Governing Body,[4] pointing out that, in this case, no court or body independent of the Administration (an interested party in the strike) had been appealed to assess whether it was legal or not.

Interpreting the provisions of national law relating to strikes in the light of ILO Convention No. 87 and the Digest of Decisions of the Committee on Freedom of Association, the Appeal Court therefore ruled that the strike was legitimate and legal and declared that each of the appellants had been wrongfully dismissed.

[1] ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87).

[2] ILO Committee on Freedom of Association.

[3] ILO, Freedom of Association, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fourth revised edition, (Geneva, 1996), para. 494. In the updated version of that digest (fifth revised edition of 2006), see para. 543.

[4] Op. cit., paras. 522 ff. In the updated version of that digest (fifth revised edition of 2006), see para. 628 ff.

Full text of the decision

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Document No. 331

Arbitration Tribunal, Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority, FJAT 62; FJAT Award 24 (2006)

Arbitration Tribunal, Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority, 9 May 2006, [2006] FJAT 62; FJAT Award 24 of 2006

Country:
FIJI

Subject:
Right to strike

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaties;[1] Work of international supervisory bodies[2]

Consideration of payment of bonus to certain employees in exchange for "no strike and no lockout"/ Consideration of the right to strike under domestic and international law/ Use of international law as a guide for interpreting domestic law

This case arose out of a dispute between the Fiji Electricity and Allied Workers Union and Fiji Electricity Authority about the Union's 2004 Log of Claims for a collective agreement and other work related issues. The outstanding claims by the Union, set out in the Log of Claims, on which the Arbitration Tribunal was required to make a determination, related to public holidays, shift work and a $200 bonus.

Only in the Tribunal's consideration of the third claim did it refer to international law. The third claim related to the fact that the Authority paid a $200 annual bonus to "hourly paid employees" performing electrical work who were represented by the Electrical Trades Union (the "ETU"). These employees were covered by a separate collective agreement, which included a clause that provided for payment of the bonus every year in recognition of there being agreement to "no strike and no lockout".

The Fiji Electricity and Allied Workers Union submitted that the employees it represented did similar work to those who belonged to the ETU. It claimed that a clause should be inserted in the collective agreement between the parties providing for the payment of the $200 bonus annually. The proposed collective agreement did not include a rule of "no strike and no lockout". The Authority refused this claim.

In this context, the Tribunal noted that section 33 of the Constitution of Fiji, gave workers the right to form and join trade unions and to organise and bargain collectively. The Tribunal further noted that the right to freedom of association and collective bargaining were the subject matter of ILO Conventions Nos. 87 and 98, which had been ratified by Fiji in 2002 and 1974, respectively.

The Tribunal stated:

"Although the right to strike is not specifically referred to in the Constitution nor is it recognized in Conventions No. 87 and 98, the ILO's supervisory bodies have provided some guidelines on the subject. As a result it is now accepted that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests". (Committee of Experts - General Survey 1983 paras 200 and 205)."[3]

The Tribunal stated that, consequently, it accepted the right to strike was a right extended to workers under section 33 of the Constitution. It also stated that the same section of the Constitution set out certain circumstances which may enable a law to place limitations on the right to strike.[4]

The Tribunal then noted:

"The ETU members are engaged in the provision of electricity services. Under the legislations this industry is classified as an essential service and this is an accepted classification under ILO standards. As a result their right to strike is somewhat restricted under the legislation and generally speaking the restrictions are consistent with ILO

standards. The Tribunal therefore is reluctant to be seen to be endorsing an agreement which surrenders a group of workers already restricted right to strike, especially when that right is surrendered for a mere $200 per annum.

As a result the Tribunal has taken the view that the $200 bonus should also be paid to the Union's members whose Collective Agreement contains a clause which demonstrates a commitment to a reasonable approach to the exercise of the right to strike."[5]

The Tribunal ordered that payment of the bonus to the Fiji Electricity and Allied Workers Union's members be backdated to 2003.

The use of the work of the ILO Committee of Experts therefore assisted in the Tribunal to articulate a definition of workers' constitutional rights to freedom of association and collective bargaining, as including a qualified right to strike.

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[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[2] ILO Committee of Experts on the Application of Conventions and Recommendations.

[3] Pages 3-4 of the decision.

[4] The Tribunal stated those limitations are set out in the Trade Disputes Act Cap 97.

[5] Page 4 of the decision.

Full text of the decision
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Document No. 332

Constitutional Court of Colombia, Decision No. C-858/08 (2008)

Constitutional Court, 3 September 2008, Decision No. C-858/08

Political Constitution of the Republic of Colombia

Article 53

(...) The international labour Conventions, duly ratified, form part of domestic legislation (…).

Article 93, paragraph 1

The international treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in domestic order. The rights and duties consecrated in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Country:
COLOMBIA

Subject:
Right to strike , Freedom of association

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaty;[1] Work of international supervisory bodies[2]

Freedom of association/ Right to strike/ Legitimacy and ownership of the right to strike/ Restrictions on the right to strike/ Demands pursuable through strike action/ Political strike action/ Use of international law as a guide for interpreting domestic law

Public proceedings of unconstitutionality were brought against two interpretations of articles 429 and 450 of the Substantive Labour Code (Código Sustantivo del Trabajo, CST) which ascribed an economic and professional purpose to strike action and established that strike action would be illegal when it pursued any other purpose.

The plaintiff felt that the CST standards partially challenged violate the Political Constitution, as well as various international instruments, since they impede, in a discriminatory and unreasonable way, the ability to strike of workers belonging to unions, union federations and confederations that do not make a claim of the kind outlined above, disregarding the fact that the Constitution does not establish any distinction in this respect that could be relevant in making such a judgement.

In order to clarify the legal problem presented by this case, the Court referred to the scope and meaning of the constitutional guarantee of the right to strike in the Colombian legal system. Following this examination of the legal system, the Court presented the following conclusions:

“[…] the guarantee of the right to strike has boundaries that are well-defined by the constitution, of which we can highlight its relative nature; with regard to its exercise, it is conditioned to the sphere of the laws that regulate it, which in developing that right must take into account its primarily labour related, collective, universal and pacific nature, and in particular its primary purpose of defending the economic and professional interests of workers.”[3]

The Court then looked to establish the type of demands pursued by the strike that are protected by the body of principles established by the International Labour Organization (ILO) by means of its Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations. In particular, the Court cited the comments published by the Committee regarding the right to strike, which define it as an

essential corollary of the right to organize protected by ILO Convention No. 87 as one of the fundamental rights afforded to workers and workers' organizations *"solely to the extent to which it constitutes a method of promoting and defending their economic and social interests"*. Moreover, it took into consideration that:

"The Committee on Freedom of Association considers that *'strikes of a purely political nature … do not fall within the scope of the principles of freedom of association'*. It also indicated that *'[i]t is only in so far as trade union organizations do not allow their occupational demands to assume a clearly political aspect that they can legitimately claim that there should be no interference in their activities'*. […] Nevertheless, according to the Committee on Freedom of Association, workers and workers' organizations should be able to express their dissatisfaction with economic and social matters affecting their interests (...) [but] the action of workers should be limited to expressing a protest and not have the aim of disturbing the public peace.

[…] The Commission also considers that organizations whose role is to defend the socio-economic and professional interest of workers should, in principle, be able to have recourse to strike action to support their positions in search of solutions to problems deriving from important economic and social policy issues, which have immediate consequences for their members and workers in general, in particular in the sphere of employment, social protection and living conditions."[4]

In light of the pronouncements of the ILO Commission of Experts and the ILO Committee on Freedom of Association, the Court concluded that the articles subject of the proceedings, when interpreted in strict terms, do not violate the text of the Constitution. Thus, the Court decided to declare the provisions constitutional, although it placed conditions on their interpretation, with the understanding that the purposes of strike action (economic and professional) do not exclude strike action taken to express positions related to social, economic or sectorial policy that directly affect the exercise of the relevant activity, occupation, trade or profession.

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[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

[2] ILO Committee on Freedom of Association; ILO Committee of Experts on the Application of Conventions and Recommendations.

[3] Section 5 of the decision.

[4] Section 4 of the decision.

Full text of the decision

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Document No. 333

High Court of Lobatse, Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others, MAHLB-000674-11 (2012)

High Court of Lobatse, Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others, MAHLB-000674-11, 9 August 2012

Country:
BOTSWANA

Subject:
Right to strike

Role of International Law:
Use of international law as a guide for interpreting domestic law

Type of instruments used:
Ratified treaties;[1] Foreign case law[2]

Right to strike/ Essential services/ Use of international law as a guide for interpreting domestic law

Registered trade unions representing various categories of public sector employees sought orders declaring invalid Section 49 of the Trade Disputes Act ("the TDA")[3] and the amendment, effected through Statutory Instrument No. 57 of 2011 ("SI 57") by the Minister of Labour and Home Affairs, of the schedule to the TDA which set out the list of essential services. With this amendment the list of essential services was broadened so as to include veterinary services, diamond cutting, sorting and selling services, and teaching services.

The Court upheld the applicants' position that Section 49 of the TDA was unconstitutional since the Constitution assigns the power to legislate to Parliament, and then addressed the three arguments put forward by the applicants regarding the invalidity of SI 57. First, the applicants argued that SI 57 was "*ultra vires* Section 49 of the TDA, because, on a proper interpretation, that section does not empower the Minister to publish an order – as he did – which is incompatible with Botswana's ILO obligations".[4] The Court observed that "[i]n this country, the courts take the broad view that constitutional and statutory provisions must be construed to uphold international law".[5] The Court then noted that Botswana has ratified two ILO Conventions, namely No. 87 on Freedom of Association and Protection of the Right to Organize and No. 98 on the Right to Organize and Collective Bargaining, and that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), in interpreting these conventions, has defined essential services "for the purpose of limiting the right to strike" as "services the interruption of which would endanger life, personal safety or the health of part of or the whole population".[6] Moreover, it observed that "their [the experts'] opinions are generally regarded as a source of international labour law"[7] and that the CEACR had also addressed an observation to the Government of Botswana in which it expressed the view that "the new categories added to the Schedule do not constitute essential services in the strict sense of the term" and had requested the amendment to that Schedule.[8] In the light of the above the Court concluded that Section 49, assuming its constitutional validity, should be interpreted as not authorising a Minister to pass a statutory instrument that violates Botswana's international law obligations. Therefore SI 57 was invalid.

The Court then examined whether the argument according to which the list of essential services was in breach of Section 13 of the Constitution, which guarantees freedom of association but also permits limitations which are reasonably justifiable in a democratic society. The Court observed that, not being clear whether under Section 13 freedom of association includes the right to strike, "it is incumbent upon this court … to interpret the said section in a manner that is consistent with international law"[9] and it noted that "[t]he right to freedom of association in international law includes the right to strike."[10] Moreover, "international law does not accept the prohibition of strike action to safeguard economic interests as a limitation that is reasonably justifiable in a democratic society", which was the alleged justification for most of the added categories of essential services, and "the ILO committee of experts (…) seems to accept that it is reasonably justifiable in a democratic society to restrict the right to strike only to the extent that meets its definition of 'essential services'".[11] Therefore SI 57 was unconstitutional.

The Court finally turned to the applicants' contention that they had a legitimate expectation that the executive would take decisions consistent with Botswana's international obligations. In this regard the Court took the view that "[t]he act of signing [ILO Conventions] gave rise to an expectation that the officers of the Executive would not act in a

manner that contradicts the letter and spirit of those Conventions unless they (applicants) have been afforded the opportunity to argue to the contrary."[12] Therefore the promulgation of SI 57 was null.

Thus relying on Conventions Nos. 87 and 98 and the pronouncements of the ILO Committee of Experts, the Court decided that SI 57, which broadened the list of essential services, was invalid and of no force or effect.

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[1] ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

[2] Australia, South Africa, UK, United States. The Court also referred to the Botswana case *Attorney-General v. Dow*, 3 July 1992, BLR 119 (CA).

[3] Section 49: "The Minister may, by order published in the *Gazette*, amend the Schedule."

[4] Para. 28.4 of the decision.

[5] Para. 192 of the decision.

[6] ILO: *Freedom of Association and Collective Bargaining, General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 81th Session, Geneva, 1994, Report III(4B), para. 159.

[7] Para. 223 of the decision, which also refers to an identical conclusion in the *Botswana Railways v Botswana Railways Train Crew Union*, Civil Appeal No. CA CACLB -042-09.

[8] Observation by the Committee of Experts on the application by Botswana of ILO Convention No. 87 published in 2012.

[9] Para. 249 of the decision.

[10] Para. 250 of the decision.

[11] Para. 252 of the decision.

[12] Para. 276 of the decision.

Full text of the decision

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Document No. 334

Higher Labour Court, Zavascki, Roberto Antonio v. Companhia Minuano de Alimentos, Brasilia (2012)

Higher Labour Court, Zavascki, Roberto Antonio v. Companhia Minuano de Alimentos, Brasilia, 15 February 2012, Case No. TST-RR-77200-27.2007.5.12.0019

Constitution of Brazil

Article 5

(1) Norms that define fundamental rights and guarantees are immediately applicable.

(2) The rights and guarantees expressed in this Constitution do not exclude other rights stemming from the system and principles adopted by this text or stemming from international treaties to which the Federal Republic of Brazil is a party.

(3) International treaties and conventions on individual rights that are adopted by both houses of the Congress, in two rounds, by three fifths of the votes of the members of each house will be the equivalent of constitutional amendments.

Country:
BRAZIL

Subject:
Right to strike , Freedom of association

Role of International Law:
Direct resolution of a dispute on the basis of international law

Type of instruments used:
Ratified treaties[1]

Freedom of association/ Anti-union practice/ Reinstatement in a job/ Direct resolution of a dispute on the basis of international law

In the present case, the enterprise subject of the legal action had been ordered by the lower court to pay compensation for anti-union discriminatory practices, since it had been proven that the dismissal in question had been carried out because the worker had taken part in a stoppage that took place in April 2007.

The Court ruled that the employer's argument that the dismissal had been due to the worker's refusal to carry out duties was an invalid one, since an absence from duties is inherent to strike action, and that the behaviour of the employer in violating the principle of freedom of association and the free exercise of the right to strike could not be tolerated.

The Court noted that the application of standards carried out by the lower court demonstrated a full observation of the principle of freedom of association and non-discrimination in full accordance with Article 1 of ILO Convention No. 98, since all workers must be protected against discriminatory acts that violate freedom of association.

Likewise, the Court made reference to Article 1 of ILO Convention No. 111, which states: "1. For the purpose of this Convention the term discrimination includes: a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies." The Court then pointed out that in a democratic state of law, governed by the constitutional values of freedom and the recognition of work as a fundamental right, which guarantees the exercise of the right to strike, the practice of any act that discriminates against participants in strike action must be sanctioned.

The Court concluded that the dismissal of the workers based on their participation in action related to a stoppage constituted a discriminatory practice, since it violated standards of public order (Law No. 7783/89 and Law 9029/95), as well as international treaties (ILO Conventions Nos. 98 and 111) and constitutional standards (articles 3, 5 and 9). It ordered the reinstatement of the worker to their job, doubling the compensation awarded from the date of dismissal.

[1] ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98); ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); American Convention on Human Rights (“Pact of San José, Costa Rica”).

Full text of the decision

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Document No. 335

Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), Carbones de la Jagua S.A. v. National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA), Case No. 57731 (2013)

Supreme Court of Justice, Employment Appeals Chamber (Sala de Casación Laboral), Carbones de la Jagua S.A. v. National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA), 10 April 2013, Case No. 57731

Political Constitution of the Republic of Colombia

Article 53

(...) The international labour Conventions, duly ratified, form part of domestic legislation (…).

Article 93, paragraph 1

The international treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in domestic order. The rights and duties consecrated in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Country:
COLOMBIA

Subject:
Right to strike

Role of International Law:
Reference to international law to strengthen a decision based on domestic law

Type of instruments used:
Ratified treaties;[1] Work of international control bodies[2]

Right to strike/Exercise of the right to peaceful strike/Use of violence/Collective bargaining/Reference to international law to strengthen a decision based on domestic law

The claimant lodged this dispute in order to request that the Court declare illegal the work stoppage initiated by the trade union on the grounds that violent was used during the stoppage, infringing the prohibition of violence enshrined in point f) of article 450 of the Substantive Labour Code.[3] According to the claimant, once the collective bargaining stage had been exhausted without any direct agreement being reached between the trade union and the enterprise, a strike was initiated without the presence of labour authorities, employing violence to block the entrances to the enterprise and preventing the performance of essential activities of that enterprise. The trade union denied using violence but admitted that it attended the street blockade to prevent the strike from being obstructed by the enterprise.

The Supreme Court of Justice referred to the provisions of domestic law and national case law, indicating that the right to strike forms part of the constitutional system of the collective right to work reinforced by ILO Conventions Nos. 87 and 98, which form part of the constitutional bloc. Nevertheless, in accordance with the scope of the right to strike established by case law in the Constitutional Court, the right to strike does not constitute a fundamental right in so far as its exercise is subject to legal regulation, and is not an absolute right but a relative one, since it is subject to limitations such as its peaceful exercise.

The Court then referred to the recommendations of the ILO Committee on Freedom of Association on the subject of pickets contained in the collection of decisions and principles of the Committee on Freedom of Association of the Governing Body of the ILO. In this respect, the Court observed:

“In fact, national legislation finds support in the principles and recommendations of the ILO Committee on Freedom of Association, in particular the recommendations of paragraphs 649, 650 and 651 on strike pickets, which state that strike action is only legitimate when it is peaceful (649) and the activity of workers is solely limited to peacefully inciting workers not to occupy their workstations (651), proscribing activities whose aim is “disturbing public order

and threatening workers who continued work" (650) or when their action "accompanied by violence or coercion of non-strikers" (651), while paragraph 667 clearly expresses that "The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike".

[…] The Committee on Freedom of Association of the Governing Body of the ILO in paragraphs 324 and 325 of Report 323,[4] states that 'the occupation of plantations by workers and by other persons is contrary to Article 8 of Convention No. 87.'"

Based on the above, the Court concluded that, in the light of the contents of the Constitution, national case law, and the recommendations of the ILO Committee on Freedom of Association, there was no "open definition" of strike action that permitted the occupation of a workplace, and much less so the use of violence. Consequently, it declared the strike subject of the present dispute to be illegal.

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[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[2] ILO Committee on Freedom of Association.

[3] Article 450 ILLEGAL CASES AND SANCTIONS. 1. Work stoppage is illegal in any of the following cases […] f) When it is not limited to the peaceful suspension of work activities.

[4] Report of the ILO Committee on Freedom of Association (No. 323) GB279/8, 279th session of November 2000, Case 2021.

Full text of the decision

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Document No. 336

Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), CBI Colombiana S.A v. Petroleum Industry Workers' Trade Union (USO), Case No. 59420 (2013)

Supreme Court of Justice, Employment Appeals Chamber (Sala de Casación Laboral), CBI Colombiana S.A v. Petroleum Industry Workers' Trade Union (USO), 10 April 2013, Case No. 59420

Political Constitution of the Republic of Colombia

Article 53

(...) The international labour Conventions, duly ratified, form part of domestic legislation (…).

Article 93, paragraph 1

The international treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in domestic order. The rights and duties consecrated in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Country:
COLOMBIA

Subject:
Right to strike

Role of International Law:
Reference to international law to strengthen a decision based on domestic law

Type of instruments used:
Ratified treaty

Right to strike/Principle of the legality of strike action/Exercise of the right to peaceful strike/Collective bargaining/Reference to international law to strengthen a decision based on domestic law

This dispute originated from the request for a strike held by employees of the enterprise CBI Colombiana S.A. at its refinery in Cartagena to be declared illegal. According to the claimant, the strike was initiated by the members of the Petroleum Industry Workers' Trade Union (USO) with the aim of obtaining an extralegal bonus. The enterprise claimed that violence was used during the work stoppage and that the strike took place without previously exhausting the negotiation procedure stipulated by law. The USO claimed that it had not initiated the strike, stating that the action was initiated by employees and that the trade union had acted solely as a mediator.

Based on witness, documental and recorded evidence, the Court ruled that the trade union had been involved in the work stoppage and that it was therefore pertinent to determine whether the strike had been legal or illegal. The Court began its analysis by drawing a distinction between strike action called within a collective bargaining process following the exhaustion of the direct negotiations phase and strike action called due to the non-compliance of an employer with their employment obligations, the strike in question in this dispute being of the latter type, since there was no negotiation process seeking an agreement in progress in this case. The Court then indicated that the legitimacy of strike action is determined by its observance of the legal requirements in force, and its peaceful exercise in accordance with the provisions of the Substantive Labour Code and ILO Convention No. 87:

"Work stoppages are considered legitimate when they respect the law and are carried out in a peaceful manner. With respect to the first of these points, Article 8.1 of ILO Convention No. 87 establishes that: *'In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.'*"

Having pointed out that both international legislation and ILO Convention No. 87 require respect for the law when initiating a work stoppage, the Court examined the requirements to be fulfilled before strike action could be initiated in accordance with the Substantive Labour Code. The Court concluded that the correct procedure had not been followed, and that, furthermore, violence had been used. Given the above, the Court declared the strike illegal.

[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Full text of the decision

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Document No. 337

Constitutional Council of Senegal, Case No. 2/C/2013 (2013)

Constitutional Council, 17 July 2013, Case No. 2/C/2013

Country:
SENEGAL

Subject:
Freedom of association , Right to strike

Role of International Law:
Reference to international law to strengthen a decision based on domestic law

Type of instruments used:
Ratified treaty;[1] Work of international supervisory bodies[2]

Attendance of a public meeting related to trade union activities / Customs inspection staff / Use of international law to strengthen a decision based on domestic law

A customs inspector brought an annulment appeal for an *ultra vires* act against an administrative decision penalising his attendance of a public meeting related to trade union activities. In support of his claim, he posited the unconstitutionality of the law on the status of customs staff, which denies these officers freedom of association and the right to strike. The administrative division of the Supreme Court responsible for ruling on the dispute, stayed the proceedings and referred the case to the Constitutional Council so that it could rule on the constitutionality of the law in question.

Proceeding to analyse Article 8 of the Constitution, which guarantees civil and political freedoms, and in particular the freedom of association, to meet and to demonstrate, as well as trade union freedoms; and Article 25 of the Constitution, which establishes the right to strike, the Constitutional Council nonetheless emphasised that these freedoms and rights are not absolute and "that in providing that they act within the framework provided by law, the drafters of the constitution intended to state that the right to strike and the freedom of association have limits resulting from the necessary reconciliation between defending professional interests, which the strike was a means of defending, and protecting the general interest which the strike could affect".[3]

The Constitutional Council continued relying on Article 8(2) of the International Covenant on Economic, Social and Cultural Rights which, from the Court's point of view, "falls within this perspective" by authorizing legal restrictions on the exercise of the right to strike with respect to members of the armed forces, the police and the civil service.[4] To support its argument, the Court also referred to the work of the ILO Committee on Freedom of Association. More specifically, the Council cited the 226th report of the Committee in which it recognized, with respect to government officials and the judiciary, that the right to strike "[could] be subject to restrictions, such as suspension or prohibition".[5] The Council also referred to the 304th report of the Committee in which the Committee stated that "the prohibition on the right to strike for customs officers, officials in positions of authority in the state, was not contrary to the principles of freedom of association".[6]

As "customs staff, paramilitary corps, provide a public service which cannot accommodate a deliberate interruption that endangers the functioning of the state and that the general interest thereby also justified the ban by the legislator on the right to strike and freedom of association of customs staff", the Constitutional Council decided that the law questioned by the applicant was not contrary to the Constitution.[7]

In this ruling, the Constitutional Council thus upheld that neither freedom of association nor the right to strike are absolute, on the basis of the provisions of the Constitution; this justification was strengthened by reference to the International Covenant on Economic, Social and Cultural Rights as well as the work of the ILO Committee on Freedom of Association.

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[1] International Covenant on Economic, Social and Cultural Rights, 1966.

[2] ILO Committee on Freedom of Association.

[3] Paragraph 9 of the decision.

[4] Paragraph 10 of the decision.

[5] Paragraph 11 of the decision.

[6] Paragraph 12 of the decision.

[7] Paragraph 14 of the decision.

Full text of the decision

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Document No. 338

Industrial Court of Kenya, Universities Academic Staff Union v. Maseno University, Case No. 814'N' (2013)

Industrial Court of Kenya, Universities Academic Staff Union v. Maseno University, 18 September 2013, Case No. 814'N' of 2009

Constitution of Kenya (2010)

Article 2

(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Country:
KENYA

Subject:
Dismissal , Protection against discrimination in employment and occupation , Right to strike

Role of International Law:
Direct resolution of a dispute on the basis of international law , Establishment of a jurisprudential principle based on international law

Type of instruments used:
Non-ratified treaty;[1] Work of international supervisory bodies[2]

Dismissal/ Right to strike/ Protection against anti-union discrimination/ Direct resolution of a dispute on the basis of international law

In this case, the Universities Academic Staff Union, representing five of its members, alleged that the respondent university had illegally and unfairly terminated the contracts of the five workers in question. In October 2006, the trade union held a strike. The union held that the disciplinary committee proceeded to dismiss the workers using their participation in the strike as justification. In its defence the University argued that the strike had been declared illegal by the relevant legal authorities, and participants in the strike had been ordered to return to work immediately. These facts motivated the University to dismiss the professors who had refused to return to work.

On examining the facts of the case, the Industrial Court of Kenya concluded that the five workers had been dismissed on the basis of their participation in activities preceding the strike and in the strike itself. In the cases of Dr. Mary Goretti Kiriaga and Dr. Billy G Ng'ong'ah, the dismissals were also motivated by their position as union officials.

The Court then proceeded to highlight the legal provisions applicable to the case, indicating that at the time the events took place, national labour legislation had not been very advanced; “However, that as it may be Kenya is a member of the ILO and is expected to respect its international obligations including respect for International Labour Standards.”[3] The Court underlined the importance of protecting trade union members against acts of anti-union discrimination, and in particular of the need to protect workers’ labour relations from being terminated based on their membership of a trade union or participation in trade union activities. In this respect, the Court referred to ILO Termination of Employment Convention, 1982 (No. 158) and the General Survey of the Committee of Experts of the ILO on Protection against Unjustified Dismissal, in which the Committee states that:[4]

“The need to base termination of employment on a valid reason is the cornerstone of the Convention's provisions. The adoption of this principle removes the possibility for the employer to unilaterally end an employment relationship of indeterminate duration by means of a period of notice or compensation in lieu thereof.”

Article 5 of ILO Convention No. 158 states that: “The following, inter alia, shall not constitute valid reasons for termination: (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; (b) seeking office as, or acting or having acted in the capacity of, a workers' representative […]

Protection against acts of anti-union discrimination, and in particular termination of employment for such activities, is particularly necessary for trade union leaders and representatives since in order to be able to fulfil their duties freely and independently they must have the guarantee that they will not suffer any prejudice as a result of holding trade union office or taking up trade union activities […]”[5]

The Court then indicated that Professor K. Inyani J. Simala had not been given an opportunity to defend himself, and that it was also appropriate to refer to ILO Convention No. 158 in this respect, stating that:

“Convention No. 158 at Article 7 provides that: ‘The employment of a worker shall not be terminated for reason related to worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.’”[6]

In order to decide on the appropriate remedy for the five workers, the Court referred to the Digest of Decisions and Principles of the Committee of on Freedom of Association, which in paragraph 837 states that:

“No one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination.”[7]

In conclusion, and based on ILO Convention No. 158 and the pronouncements of the ILO Committee of Experts, the Court ruled that the termination of the employment contracts in question was illegal and unjustified. Based on the above, and in line with the recommendations of the ILO Committee on Freedom of Association, the Court ruled that the best form of compensating the workers would have been to reinstate them; however, since a long period of time had passed between the dismissals and the judgement, the Court instead ordered compensation to be paid to the workers.

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[1] ILO Termination of Employment Convention, 1982 (No. 158).

[2] ILO Committee of Experts on the Application of Conventions and Recommendations; ILO Committee on Freedom of Association.

[3] Page 38 of the decision.

[4] ILO: Protection against Unjustified Dismissal General Survey of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 82 Session, Geneva, 1995.

[5] Pages 39 and 40 of the decision.

[6] Page 43 of the decision.

[7] ILO: “Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO”, fifth revised edition, 2006.

Full text of the decision

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Document No. 339

Supreme Court of Justice of Colombia, R y R. asociados S.A. v. National trade union of workers in the cork, plastics, polyethylene, polyurethane, synthetics, components and derivatives processing industry, Case No. 59413 (2014)

Supreme Court of Justice, R y R. asociados S.A. v. national trade union of workers in the cork, plastics, polyethylene, polyurethane, synthetics, components and derivatives processing industry, 27 August 2014, Case No. 59413

Political Constitution of the Republic of Colombia

Article 53

(...) The international labour Conventions, duly ratified, form part of domestic legislation (…).

Article 93, paragraph 1

The international treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in domestic order. The rights and duties consecrated in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Country:
COLOMBIA

Subject:
Right to strike

Role of International Law:
Direct resolution of a dispute on the basis of international law

Type of instruments used:
Work of international supervisory bodies[1]

Work stoppage/ Strike action/ Reference to international law to strengthen a decision based on domestic law

The enterprise lodged an appeal requesting that the strike held by the trade union be declared illegal since it did not comply with the legal requirements for embarking on strike action. The enterprise alleged that it had gone into liquidation but that it was still paying wages on time; however it had been unable to comply with its social security payment obligations.

In its defence, the trade union argued that their action had not taken the form of a strike in the context of a collective labour dispute but a work stoppage which was the fault of the employer, which had not met its social security contributions.

The Supreme Court indicated that the legislation recognized four types of work stoppages, including stoppages undertaken due to the failure of an employer to comply with their labour and social security obligations. The Court also underlined that all work stoppages must comply with the general requirements of being carried out in an orderly and peaceful manner. In this respect, the Court pointed out that:

“The ILO Committee on Freedom of Association has repeatedly maintained that the legitimate exercise of freedom of association does not encompass abuses of the right to strike in its exercise, such as criminal acts.”[2]

The Court considered that the prior requirements for embarking on a work stoppage did not signify support for a failure to comply with obligations on the part of employers; rather, they were a guarantee of the employer’s right to defence, since otherwise the employer would not have the right to contest or find ways of resolving the failure to meet their obligations. The Court highlighted that on this issue the Committee on Freedom of Association had stated as follows:

“The obligation to give prior notice to the employer before calling a strike may be considered acceptable.”[3]

Given that the trade union had not proved that they had complied with the legal requirements for embarking on the stoppage, the Court, making use of the work of the Committee on Freedom of Association to strengthen its decision, declared the work stoppage to be illegal.

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[1] ILO Committee on Freedom of Association.

[2] Page 20 of the decision.

[3] Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 2006, paragraph 552.

Full text of the decision

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Document No. 340

Industrial Court of Nigeria, Aero Contractors Co. of Nigeria Limited v. the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees, Case No. NICN/LA/120/2013 (2014)

Industrial Court of Nigeria, Aero Contractors Co. of Nigeria Limited v. the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees, 4 February 2014, Case No. NICN/LA/120/2013

Constitution of the Federal Republic of Nigeria

Article 12, paragraph 1

No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

254 C - (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(…)

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards;

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

Country:
NIGERIA

Subject:
Right to strike

Role of International Law:
Direct resolution of a dispute on the basis of international law

Type of instruments used:
Work of international supervisory bodies[1]

Right to strike/ Essential services/ Air transport/ Direct resolution of a dispute on the basis of international law

The enterprise Aero Contractors Co. of Nigeria Limited, dedicated to the air transport of people and goods, called on the Industrial Court of Nigeria to decide whether members of the trade unions the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees had the right to call and embark on strike action. The enterprise argued that, according to the provisions of the Trade Unions Act of 2004, the transport of passengers and goods was an essential service; on these grounds, the law restricted the right to strike of the members of the trade unions subject to the legal action.

The trade unions argued that, according to the ILO Committee on Freedom of Association, the prohibition of strike action in the case of essential services was solely acceptable when there was a clear and imminent threat to the life, personal safety or health of the whole or part of the population, and that these requisites were not fulfilled in this case.

The unions also considered that the prohibition of strike action constituted a breach of the rights to freedom of association and collective bargaining, contradicting the provisions of ILO Conventions Nos. 87 and 98. The enterprise objected to the application of these Conventions, considering that since there was no law that had introduced the Conventions into the country's legal system, they did not have the force of law.

In its analysis the Court concluded that, contrary to the standpoint expressed by the enterprise, Section 245C of the Constitution did grant the Court the jurisdiction and power to apply any international convention ratified by Nigeria.

The Court then referred to the pronouncements of the ILO Committee on Freedom of Association recalling that:

"[…] by the ILO publication, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (1996), Fourth (revised) edition at paragraph 131 at page 29, "the right to strike and to organize union meetings are essential aspects of trade union rights".[2]

With the aim of deciding whether air transport was an essential service, the Court referred to the work of the ILO Committee of Experts on the Application of Conventions and Recommendations, pointing out that:

" … the Committee of Experts defined such services as those "the interruption of which would endanger life, personal safety or health of the whole or part of the population".

Thus, the Committee has considered to be essential services in the strict sense, where the right to strike may be subject to major restrictions or even prohibitions, to be: the hospital sector; electricity services; water supply services; the telephone service; air traffic control. In contrast, the Committee has considered that, in general, the following do not constitute essential services in the strict sense of the term, and therefore the prohibition to strike does not pertain: [...] *aircraft repairs [...] transport generally […]".*[3]

Making use of the work of the ILO Committee of Experts and the Committee on Freedom of Association to interpret the Trade Unions Act of 2004, the Court concluded that the trade union members defendants in the case did have the right to embark on strike action since the services they provided were not essential; however, if any union member provided air traffic control services then the prohibition of strikes would apply to that member.

[1] ILO Committee of Experts on the Application of Conventions and Recommendations; ILO Committee on Freedom of Association.

[2] Pag. 18 of the decision.

[3] Pag. 19 of the decision.

Full text of the decision

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Document No. 341

Labour Court of South Africa, Chamber of Mines of South Africa v. Association of Mineworkers of South Africa, National Union of Mineworkers, United Association of South Africa, Case No. J99/14 (2014)

Labour Court of South Africa, Chamber of Mines of South Africa v. Association of Mineworkers of South Africa, National Union of Mineworkers, United Association of South Africa, 23 June 2014, Case No. J99/14

Country:
SOUTH AFRICA

Subject:
Right to strike , Collective bargaining

Role of International Law:
Reference to international law to strengthen a decision based on domestic law

Type of instruments used:
Instrument not subject to ratification;[1]Work of international supervisory bodies[2]

Collective bargaining/ Right to strike/ Non-union members/ Place of work/ Reference to international law to strengthen a decision based on domestic law

In this case, the Court examined the appeal lodged by the Association of Mineworkers of SA against the sentence of the court of the first instance, which had ruled in favour of the Chamber of Mines of South Africa. The ruling of the first instance declared valid the extension of the collective agreement signed between the Chamber of Mines, the National Union of Mineworkers, the Solidarity and the United Association of South Africato include workers who were not members of those organizations. The decision had been made in line with the provisions of article 23 (1) (d) of the Labour Relations Act (LRA), which had been interpreted in the sense that every mining company constituted a workplace. The Association of Mineworkers wanted the Court to recognize the fact that, since it had majority representation in five mines, it could embark on a new negotiation process with the Chamber with the understanding that each mine was an independent workplace. Alternatively, the Association called for the definition of a workplace contained in article 23 of the Labour Relations Act (LRA) to be declared unconstitutional, since it constituted an unfair restriction on the right to strike by denying the workers who were union members and covered by the collective agreement the possibility of exercising this right.

The Court considered that there was no incongruity or absurdity resulting from the application of the statutory definition, nor was there any injustice, and consequently it rejected the main claim of the Association. In relation to the secondary claim, the Court considered that, according to article 23 of the Labour Relations Act (LRA), the right to strike was by its nature subject to restrictions; however, the question in this case was to establish whether the restrictions given on the definition of a workplace were fair and reasonable. The Court considered that this restriction had its roots in a political decision on the part of the legislator to adopt a specific model of collective bargaining in the workplace, and since this had been a majority decision, it should be considered legitimate. The Court then underlined that since the restriction on the right to strike was possible in accordance with national and international standards, the restriction subject to the action was fair. In this regard, the Court observed that:

“[The ILO’s Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association]have interpreted Conventions Nos. 87 and 98 as to includea right to strike. [...] both [bodies] accept as a starting point that the right to strike is not absolute and that it may be restricted or, in exceptional circumstances, even prohibited.

Paragraph 142 of the General Survey on the fundamental Conventions concerning rights at work in the light of the ILO Declaration on Social Justice for a Fair Globalisation tabled at the 2012 International Labour Conference reads as follows: ‘[...] If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements’”.[3]

Subsequently, and in relation to the extension of collective agreements, the Court indicated that:

“[…] the Collective Agreements Recommendation, 1951 (No.91) provides in Article 4 that ‘the stipulations of a collective agreement should apply to all workers concerned employed in the undertakings covered by the agreement unless the agreement specifically provides to the contrary.’ In a gloss on Recommendation 91, the Committee of Experts states at paragraph 245 of the General Survey that ‘extension of collective agreements is not contrary to the principle of voluntary collective bargaining and is not in violation of Convention No. 98’”.[4]

Based on the above, the Court concluded that the restriction of the right to strike created by the definition of the workplace contained in article 23 of the Labour Relations Act (LRA) was not unconstitutional, and that the aforementioned restriction was compatible with the principles of freedom of association defined by the ILO Committee of Experts and the Committee on Freedom of Association. The Court therefore dismissed the case of the Association of Mineworkers.

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[1] Collective Agreements Recommendation, 1951 (No. 91).

[2] ILO Committee of Experts on the Application of Conventions and Recommendations; ILO Committee on Freedom of Association.

[3] Pages 29 and 30 of the decision.

[4] Pages 30 and 31 of the decision.

Full text of the decision
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Document No. 342

Supreme Court of Canada, Saskatchewan Federation of Labour v. Saskatchewan, Case No. 2015 CSC 4 (2015)

Supreme Court of Canada, Saskatchewan Federation of Labour v. Saskatchewan, 30 January 2015, Case No. 2015 CSC 4

Country:
CANADA

Subject:
Collective bargaining , Right to strike

Role of International Law:
Reference to international law to strengthen a decision based on domestic law

Type of instruments used:
Ratified treaties;[1] Work of international supervisory bodies[2]

Canadian Charter of Rights and Freedoms/ Right to strike/ Right to collective bargaining/ Law limiting the exercise of the right to strike of employees providing essential services/ Use of international law as a guide for interpreting domestic law

An appeal was filed with the Canadian Supreme Court, in which the appellants disputed the constitutionality of two laws adopted by the government of Saskatchewan. According to the appellants, the Public Service Essential Services Act, SS 2008 c. P-42.2 (hereinafter the PSESA) and the Trade Union Amendment Act 2008 were in breach of Article 2(d) of the Canadian Charter of Rights and Freedoms with respect to freedom of association.

The PSESA defined a legislative scheme that prohibited the exercise of the right to strike by public sector employees who provided essential services, so that these employees were required to continue to carry out their duties in accordance with the terms established by the collective agreement, with no effective mechanism provided to resolve the deadlock in collective bargaining. The Trade Union Amendment Act 2008 amended the trade union certification process by increasing the percentage of employee support required and reducing the period within which this support had to be obtained in writing. It also amended the rules on the employer's communication with its employees.

While the Supreme Court rapidly dismissed the legal question concerning the constitutionality of the Trade Union Amendment Act 2008, stating that this law "did not breach s. 2(d)",[3] with respect to the PSESA, the Court was confronted by the legal question of determining whether the freedom of association guaranteed in Article 2(d) of the Charter protects the right to strike and, if so, to examine whether the prohibition on employees providing essential services taking part in a strike substantially hinders the right to a true collective bargaining process.

The Court made a very significant change to its case law as it recognised for the first time that "the right to strike is constitutionally protected because of its crucial role in a meaningful process of collective bargaining".[4]

In support of its argument, the Court specifically relied on Canada's accession to international instruments recognising the right to strike, as well as other sources of international law. It specifically referred to Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights, Article 45 of the Charter of the Organization of American States as well as ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).[5]

In this respect, the Court highlighted: "Although Convention No. 87 does not explicitly refer to the right to strike, the ILO supervisory bodies, including the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have recognized the right to strike as an indissociable corollary of the right of trade union association that is protected in that convention".[6] Referring to the digest of decisions and principles of the Committee on Freedom of Association, it added: "Though not strictly binding, the decisions of the Committee on Freedom of Association have considerable persuasive weight and have been favourably cited and widely adopted by courts, tribunals and other adjudicative boards around the world, including our Court".[7]

The Court also relied on the international consensus reached concerning the necessity of the right to strike to meaningful collective bargaining by citing the case law of the European Court of Human Rights.[8]

Based on the above, the Supreme Court deduced “that a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. The ability to engage in the collective withdrawal of services in the process of the negotiation of a collective agreement is, and has historically been, the irreducible minimum of the freedom to associate in Canadian labour relations.”[9]

It continued its examination by analysing the infringement on the freedom of association guaranteed by the Canadian Charter of Rights and Freedoms. In this respect, the Court believed that the fact that the PSESA prohibited the employees concerned from taking part in a strike for the purpose of negotiating their conditions of work substantially hindered the right to a real collective bargaining process, and therefore infringed on the freedom guaranteed by the Charter.[10]

At this point, the crucial question, according to the Court, was whether the arguments maintained by the state breached constitutional rights as little as possible, or otherwise. Analysing the provisions of the PSESA, the Court noted that “The unilateral authority of public employers to determine whether and how essential services are to be maintained during a work stoppage with no adequate review mechanism, and the absence of a meaningful dispute resolution mechanism to resolve bargaining impasses, justify the conclusion that the PSESA is not minimally impairing. It is therefore unconstitutional”.[11] The Supreme Court thus ruled the PSESA 2008 unconstitutional, strengthening its reasoning on the basis of ratified international treaties, including Convention No. 87 and the work of the ILO’s Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations.

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[1] ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); International Covenant on Economic, Social and Cultural Rights, 1966; Charter of the Organization of American States.

[2] ILO Committee on Freedom of Association; ILO Committee of Experts on the Application of Conventions and Recommendations.

[3] The Supreme Court of Canada dismissed the appeal against the Trade Union Amendment Act 2008 (see paragraph 8), stating: “The changes it introduces to the process by which unions may obtain or lose the status of a bargaining representative, as well as the changes to the rules governing employer communication to employees, do not substantially interfere with freedom of association.” (Paragraph 21 of the decision).

[4] Page 51.

[5] Para. 65-67.

[6] Para. 67.

[7] Para. 68-69.

[8] Para. 71.

[9] Page 10.

[10] Page 15.

[11] Page 19.

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