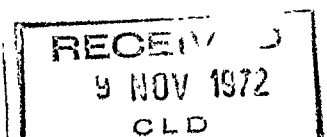
Freedom of Association

Digest of decisions
of the Freedom of Association Committee
of the Governing Body of the ILO

International Labour Office Geneva 1972



The reports of the Committee on Freedom of Association have been published as follows:

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	Reports of the International Labour Organisation to the United Nations (Geneva, ILO)		
1-3	Sixth Report (1952) App. V		
4-6	Seventh Report (1953) App. V		
7-12	Eighth Report (1954) App. II		
	Official Bulletin		
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13-14	XXXVII	1954	4
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[1] The letter S, followed as appropriate by a roman numeral, indicates a supplement.

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INTRODUCTION

Freedom of association is a subject of such importance that the International Labour Organisation has been prompted, on the one hand, to adopt international standards and, on the other hand, to set up special machinery to deal with it. The standards adopted are set forth in 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), which, to date, have been ratified, respectively, by seventy-nine and ninety-one States. The special machinery, which was set up in 1950-51, pursuant to an agreement concluded with the United Nations Economic and Social Council[1], provides for intervention by two bodies: the Fact-Finding and Conciliation Commission on Freedom of Association and the Freedom of Association Committee of the Governing Body.

The function of the Fact-Finding and Conciliation Commission, composed of independent persons, is to carry out an impartial examination of any complaint concerning alleged infringements of trade union rights which may be referred to it by the Governing Body. The Commission is essentially a fact-finding body, but is authorised to discuss with the government concerned the possibilities of securing the adjustment of difficulties by agreement. Except in the cases covered by article 26 of the ILO Constitution, which relates to the examination of complaints in respect of ratified Conventions, it may intervene only with the consent of the government concerned. To date, two such cases have thus been dealt with.

The Committee on Freedom of Association, set up by the Governing Body of the ILO is tripartite in character. Since its inception, it has been composed of nine regular members and nine substitute members drawn from the Government, Employers' and Workers groups of the Governing Body.[2]

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1 Resolution 277 (X) concerning trade union rights (freedom of association), adopted by the Economic and Social Council on 17 February 1950 during its 10th Session.

2 It has been laid down that representatives or nationals of a State against which a complaint has been made, or persons occupying an official position in a national association of employers or workers which has filed a complaint, are disqualified from participating in the Committee when it is examining the cases in which they are concerned.

Because of the quasi-judicial nature of the work of the Committee, its members participate in a personal capacity and not as representing their governments or organisations. The sessions of the Committee are held in private.

The Committee has to deal with complaints of infringement of freedom of association which, to be receivable, must be submitted either by governments or by organisations of employers or workers.[1] Complaints may be presented against a government whether or not it has ratified the freedom of association Conventions.

When a complaint is received it is communicated to the government concerned for its observations, while the complaining organisation is allowed a stipulated period in which to supply further information in substantiation of its complaint, which is likewise communicated to the government. The Committee may, at its discretion, decide that the substance of a government's reply should be communicated to the complainants for comment, and, if comments are made thereon, the government is given the opportunity to reply to them.

Once in possession of all this information, the Committee makes its recommendations to the Governing Body.

After examining a complaint the Committee may recommend the Governing Body to refer it to the Fact-Finding and Conciliation Commission. The Committee may also decide to recommend to the Governing Body that the attention of the government concerned be drawn to anomalies noted with a view to steps being taken to remedy the situation.

In dealing with complaints, the Committee has taken a series of decisions concerning freedom of association. In this connection, the Committee has considered it appropriate that, in discharging the responsibility entrusted to it, it should be guided in its task, among other things, by the provisions approved by the Conference and embodied in the Conventions on freedom of association, which afford a basis for comparison when particular allegations are being examined.

The Committee, having dealt with some 700 cases since it was set up in 1951, has gradually taken a series of decisions covering most aspects of freedom of association and the protection of trade union rights. More than once the wish has been expressed that a digest of these decisions should be compiled for easy reference.

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[1] Complaints emanating from occupational organisations are receivable only if they are presented by a national organisation having a direct interest in the matter, by international organisations of employers or workers having consultative status with the ILO or by other international organisations of employers or workers where the allegations relate to matters directly affecting their affiliated organisations.

In a resolution concerning trade union rights and their relation to civil liberties, adopted unanimously by the International Labour Conference at its 54th Session (Geneva, 1970), the Governing Body was invited, inter alia, "to instruct the Director-General to publish and distribute widely in a concise form the supplementary decisions taken by the Committee on Freedom of Association".[1]

It is to meet this request that this digest has been compiled, covering the work of the Committee on Freedom of Association up to and including its 120th Report (November 1970).

It is appropriate to note that the decisions of the Committee have been taken in the light of the special circumstances prevailing in each case and accordingly, they should be considered within the context in which they appear. However, when examining a case, the Committee usually makes reference to decisions which it has taken or mentioned previously when it has been faced with circumstances similar to those in the case under examination, so that a certain continuity as regards the criteria employed by it in reaching its conclusions may be maintained. Accordingly, in the present digest reference is made to cases in which the relevant decision forms an integral part of the final conclusions of the Committee and also to cases in which the Committee has confined itself to mentioning this decision as an aspect of its line of argument, although its conclusion might be different as a result of the special circumstances of the case in question.

A list of the ILO publications in which the reports of the Committee on Freedom of Association appear, and which contain the examination of the various cases, will be found above, on the reverse of the title page.

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[1] ILO: Resolutions Adopted by the International Labour Conference at Its 54th Session (Geneva, 1970), Resolution VIII, paragraph 11.

A. ESTABLISHMENT OF ORGANISATIONS

1. Right of workers and employers "without distinction whatsoever" to establish and join organisations

General principles

1.

A situation in which the workers in a country, after the dissolution of all the trade unions, are unable to form and join trade union organisations for the protection of their interests, is contrary to generally recognised principles relating to freedom of association.

70th Report, Case No. 202, para. 133.

2.

Any measures taken against workers because they attempted to constitute organisations or to reconstitute workers' organisations outside the official trade union organisation would be incompatible with the principle that workers should have the right to establish and join organisations of their own choosing without previous authorisation.

60th Report, Case No. 143, para. 62; 95th Report, Case No. 497, para. 317; 116th Report, Cases Nos. 520 and 540, para. 261.

3.

Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters and that the words "without distinction whatsoever" used in this Article mean that freedom of association must be guaranteed without discrimination of any kind on the basis of occupation, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy but also to civil servants and employees of public services in general.

110th Report, Case No. 519, para. 78.

Race

See also: 72, 88.

4.

A law which removes the right of African workers to establish trade unions which can register and participate in the industrial councils which may be set up for the purpose of negotiating agreements and settling disputes which constitutes a form of discrimination is inconsistent with the principle accepted in the majority of countries and embodied in the Convention adopted by the ILO that workers without distinction whatsoever should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation, and the principle that all workers' organisations should enjoy the right of collective bargaining.

15th Report, Case No. 102, para. 141.

5.

In one case where trade unions attempting to organise African workers were not recognised by the Administration, their leaders were not allowed to negotiate, and where the workers' representatives and the regional committees (appointed by the Administration) were the official medium for the purpose of making representations, these bodies being in fact "the only medium", the Committee recalled the importance which it attaches to the generally accepted principle that workers without distinction whatsoever should have the right to establish and join organisations of their own choosing without previous authorisation.

85th Report, Cases Nos. 300, 311 and 321, paras. 145 and 146.

Political opinions

6.

As regards a law enacted purely for a political reason, namely, that of barring Communists in general, as citizens, from all public life, the Committee considered that the matter was one of internal national policy with which it

was not competent to deal and on which it should therefore refrain from expressing any view. However, in view of the fact that measures of a political nature may have an indirect effect on the exercise of trade union rights, the Committee drew attention to the views which it has expressed with regard, first, to the principle that workers, without distinction whatsoever, should have the right to join organisations of their own choosing and, secondly, to the importance of due process in cases in which measures of a political nature may indirectly affect the exercise of trade union rights.

12th Report, Case No. 63, para. 276; 15th Report, Case No. 102, para. 136; 70th Report, Case No. 314, para. 97; 91st Report, Case No. 472, para. 13(b).

Civil servants and officials in the public service

7.

Taking account of the importance of employees of the State and local authorities having the right to constitute and register trade unions, the prohibition of the right of association for workers in the service of the State is incompatible with the generally accepted principle that workers, without distinction whatsoever, shall have the right to establish organisations of their own choosing without previous authorisation.

Fourth Report, Case No. 5, para. 25; 24th Report, Case No. 144, para. 243; 26th Report, Cases Nos. 134 and 141, para. 100; 67th Report, Case No. 305, para. 104; 69th Report, Case No. 285, para. 57; 84th Report, Case No. 423, para. 73; 95th Report, Case No. 335, para. 452.

8.

The denial of the right of publicly employed workers to set up trade unions, as may privately employed workers, with the result that their "associations" do not enjoy the same advantages and privileges as do "trade unions", involves discrimination in the case of government-employed workers and their organisations, as compared with privately employed workers and their organisations. Such a situation gives rise to the question of compatibility of these distinctions with Article 2 of Convention No. 87, according to which workers "without distinction whatsoever" shall have the right to establish and join organisations of their own choosing

without previous authorisation, as well as with Articles 3 and 8(2) of the Convention.

48th Report, Case No. 193, para. 52.

9.

In one case where the port employees of a country had been placed in the position of government servants by custom and agreement, outside the coverage of the Trade Unions Act, and the Government had considered that it was thereby relieved of its obligation to apply Convention No. 87 (ratified by the country concerned), the Committee pointed out that the Government had assumed an international obligation to apply its provisions to "workers without distinction whatsoever" and that in these circumstances the provisions of the Convention could not be regarded as subject to modification in the case of particular categories of workers because of any private or national agreement, custom or other understanding subsisting between such categories of workers and the Government.

48th Report, Case No. 193, para. 54.

Agricultural workers

10.

A law which lays down that not less than 60 per cent of the members of a trade union must be literate is incompatible with the principle established in Convention No. 87 according to which workers, without distinction whatsoever, have the right to establish organisations of their own choosing. Article 1 of Convention No. 11 confirms this principle and lays down that each Member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers.

24th Report, Case No. 144, para. 237.

Plantation workers

11.

The Committee, while recognising fully that the estates are private property, considered that, as the workers not only work but also live on the estates, so that it is only by entering the estates that trade union officials can normally carry on any trade union activities among the workers, it is of special importance that the entry into the estates of trade union officials for the purpose of lawful trade union activities should be readily permitted, provided that there is no interference with the carrying on of the work during working hours and subject to any appropriate precautions for the protection of the estate. In this connection, the Committee also drew attention to the resolution adopted by the Plantations Committee at its First Session in 1950 providing that employers should remove existing hindrances, if any, in the way of the organisation of free, independent and democratically controlled trade unions by plantation workers and should provide such unions with facilities for the conduct of their normal activities, including free office accommodation, freedom to hold meetings and freedom of entry.

Fourth Report, Case No. 34, para. 168; 52nd Report, Case No. 239, paras. 180 and 181; 76th Report, Case No. 327, paras. 308 and 309; Case No. 379, para. 375; 89th Report, Case No. 444, para. 95; 119th Report, Case No. 611, para. 93.

Criminal record

12.

The Committee expressed the hope that legislation providing that a person merely charged with an offence, but not convicted thereof, may be deprived of the right to belong to a trade union, would be re-examined.

Fourth Report, Case No. 10, para. 77.

2. Right of workers and employers to establish and join organisations "of their own choosing"

General principles

13.

The Committee has emphasised the importance that it attaches to the fact that workers and employers should in actual practice be able to form and join organisations of their own choosing in full freedom.

Sixth Report, Case No. 3, para. 1024.

Single trade unions

See also: 2, 62, 151, 152.

14.

The Committee has pointed out that the International Labour Conference, by including the words "organisations of their own choosing" in Convention No. 87, made allowance for the fact that in certain countries there are a number of different workers' and employers' organisations which an individual may choose to join for occupational, denominational or political reasons; but it did not pronounce upon the question whether it is in the interest of workers and employers to have unified organisations rather than a number of separate ones. But it also recognised thereby the right of any group of workers (or employers) to form breakaway organisations if they think this desirable to safeguard their material or moral interests.

36th Report, Case No. 190, para. 203.

15.

The Committee has recalled that, while it may be to the advantage of workers to avoid a multiplicity of trade union organisations, unification of the trade union movement imposed through state intervention by legislative means runs

counter to the principle, embodied in Articles 2 and 11 of Convention No. 87. The Committee of Experts of the ILO on the Application of Conventions and Recommendations has emphasised on this question that "there is a fundamental difference, with respect to the guarantees of freedom of association and protection of the right to organise, between a situation in which a trade union monopoly is instituted or maintained by legislation and the factual situations which are found to exist in certain countries in which all the trade union organisations join together voluntarily in a single federation or confederation, without this being the direct or indirect result of legislative provisions applicable to trade unions and to the establishment of trade union organisations. The fact that workers and employers generally find it in their interests to avoid a multiplication of the number of competing organisations does not, in fact, appear sufficient to justify direct or indirect intervention by the State, and, especially, intervention by the State by means of legislation."

While fully appreciating the desire of any government to promote a strong trade union movement by avoiding the defects resulting from an undue multiplicity of small and competing trade unions, whose independence may be endangered by their weakness, the Committee has drawn attention to the fact that it is more desirable in such cases for a government to seek to encourage trade unions to join together voluntarily to form strong and united organisations than to impose upon them by legislation a compulsory unification which deprives the workers of the free exercise of their right of association and thus runs counter to the principles which are embodied in the international labour Conventions relating to freedom of association.

67th Report, Case No. 303, paras. 260 and 264; 95th Report, Case No. 448, para. 124; 120th Report, Cases Nos. 572, 581, 586, 596, 610 and 620, para. 47.

16.

Where one Government stated that it was not prepared to "tolerate" a trade union movement split into several tendencies and that it is determined to impose unity on the whole movement the Committee recalled that Article 2 of Convention No. 87 provides that workers and employers shall have the right to establish and to join organisations "of their own choosing". This provision of the Convention is in no way intended as an expression of support either for the idea of trade union unity or for that of trade union diversity. It is intended to convey on the one hand that in many countries there are several organisations among which the workers or the employers may wish to choose freely and,

on the other hand, that workers and employers may wish to establish new organisations in a country where no such diversity has hitherto been found. In other words, although the Convention is evidently not intended to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases. Accordingly, any governmental attitude involving the "imposition" of a single trade union organisation would be contrary to Article 2 of Convention No. 87.

68th Report, Case No. 313, para. 56; 83rd Report, Case No. 393, para. 63; 105th Report, Case No. 531, para. 283.

17.

A situation in which an individual is denied any possibility of choice between different organisations, by reason of the fact that the legislation permits the existence of only one organisation in the sphere in which he carries on his occupation, is incompatible with the principles embodied in Convention No. 87; in fact, such provisions establish, by legislation, a trade union monopoly which must be distinguished both from union security clauses and practices and from situations in which trade unions voluntarily form a single federation or confederation.

65th Report, Case No. 266, para. 61;
83rd Report, Case No. 303, para. 191.

18.

Certain provisions under which the Registrar may enrol an applicant union for any particular industry in any particular area if he is satisfied that no other union is enrolled or registered for that industry in that area, are inconsistent with the principle that workers, without distinction whatsoever, should have the right to join freely organisations of their own choosing.

15th Report, Case No. 108, para. 212.

19.

The power to impose an obligation on all the workers in the category concerned to pay contributions to the single national trade union which is permitted to be formed in any one occupation in a given area is not compatible with the

principle that workers should have the right to join organisations "of their own choosing". In these circumstances, it would seem that a legal obligation to pay contributions to that monopoly trade union, whether workers are members or not, represents a further consecration and strengthening of that monopoly.

65th Report, Case No. 266, paras. 61 and 62.

20.

Where the legislation provided that a trade union shall consist of more than 50 per cent of the wage earners if it is a wage earners' union, more than 50 per cent of the salaried employees if it is a salaried employees' union, and more than 50 per cent of the wage earners and of the salaried employees if it is a mixed union, the Committee recalled that such a provision is not in conformity with Article 2 of Convention No. 87, that it places a major obstacle in the way of the establishment of trade unions capable of "furthering and defending the interests" of their members and moreover has the indirect result of prohibiting the establishment of a new trade union whenever a trade union already existed in the undertaking or establishment concerned.

85th Report, Case No. 335, paras. 438 and 439.

21.

The Committee suggested to one Government that it should amend its legislation so as to make it clear that the fact that a trade union already exists for the same class of employees as a new union seeking registration organises or proposes to organise, or the fact that the existing union holds a bargaining certificate in respect of such class of employees, could not give rise to objections of sufficient substance to justify the Registrar in refusing to register the new union.

93rd Report, Case No. 303, para. 100.

22.

The power given to the Registrar to refuse registration when he is satisfied that a trade union already registered is sufficiently representative of the workers in question and, even more so, his power to refuse registration when he considers that an existing registered organisation is

likely to become sufficiently representative of these interests, is capable of being utilised so as to bring about a unification of the trade union movment by legislative means.

95th Report, Case No. 448, para. 124.

23.

As regards situations in which workers' organisations have themselves requested the unification of the trade unions and this desire has been confirmed in such a way as to make it equivalent to a legal obligation, the Committee has pointed out that when a unified trade union movement results solely from the will of the workers this situation does not require to be sanctioned by legal texts, the existence of which might give the impression that the unified trade union movement is merely the result of existing legislation or is kept in force only through such legislation.

83rd Report, Case No. 393, paras. 64 and 65.

Most representative unions

See also: 56, 214, 215, 216, 224, 225.

24.

In cases where the legislation, without any intention of discrimination, confers on recognised unions, which are in fact the most representative, certain privileges in connection with the defence of occupational interests which only they are in a position to perform effectively, the granting of such privileges may not be made subject to conditions of such a nature as to bring into question through their operation the fundamental guarantees of freedom of association.

Sixth Report, Case No. 11, para. 95.

25.

Considering in one case the limited functions which were, by law, open to certain categories of trade unions,

the Committee felt that the distinction made between trade unions by the national legislation could have the indirect consequence of restricting the freedom of the workers to belong to the organisations of their choosing. The reasons which led the Committee to adopt this position are as follows. As a general rule, when a government can grant an advantage to one particular organisation or withdraw that advantage from one organisation in favour of another, there is a risk, even if such is not the government's intention, that one trade union will be placed at an unfair advantage or disadvantage in relation to the others, which thereby constitutes an act of discrimination. More precisely, by placing one organisation at an advantage or at a disadvantage in relation to the others, a government may either directly or indirectly influence the choice of workers regarding the organisation to which they intend to belong, since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organisation for occupational, religious, political or other reasons. Thus, the freedom to choose is a right expressly laid down in Convention No. 87.

58th Report, Case No. 231, paras. 551 and 552.

26.

The Committee has pointed out that on several occasions, and particularly during discussion on the draft of the Right to Organise and Collective Bargaining Convention, the International Labour Conference referred to the question of the representative character of trade unions, and, to a certain extent, it agreed to the distinction sometimes made between the various unions concerned according to how representative they are. Article 3, paragraph 5, of the Constitution of the ILO states the concept of "most representative" organisations. Accordingly the Committee felt that the mere fact that the law of a country draws a distinction between the most representative trade union organisations and other trade union organisations is not in itself a matter for criticism, provided that such distinction does not accord to the most representative organisation privileges extending beyond the privilege of priority, on the ground of its having the largest membership, in representation for such purposes as collective bargaining or consultation by governments or for the purpose of nominating delegates to international bodies. In other words, this distinction should not have the effect of depriving trade union organisations not recognised as being among the most representative of the essential means whereby they may defend the occupational interests of their members, organise their administration

and activities and formulate their programmes, as provided for in Convention No. 87.

36th Report, Case No. 190, para. 193; 58th Report, Case No. 220, paras. 37 and 38; Case No. 231, paras. 545 and 546; 59th Report, Case No. 258, paras. 48 and 49; 67th Report, Case No. 303, para. 310; 77th Report, Case No. 368, para. 24; 78th Report, Case No. 352, para. 165; 105th Report, Case No. 531, para. 284.

27.

The Committee has considered that it is not necessarily incompatible with the Convention to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit, but this is the case only if a number of safeguards are provided. In this connection the Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following: (a) certification to be made by an independent body; (b) the representative organisation to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organisation which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organisation other than the certificated organisations to demand a new election after a fixed period, often twelve months, has elapsed since the previous election.

67th Report, Case No. 303, para. 292; 73rd Report, Case No. 316, para. 94.

28.

The Committee has conceded that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness, but has taken the view that the intervention of the public authorities with regard to advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organisation to which they wish to belong.

92nd Report, Case No. 376, para. 31.

29.

The Committee has drawn attention to the importance which it attaches to the principle that the determination of the most representative trade union should always be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse.

36th Report, Case No. 190, para. 195; 59th Report, Case No. 258, para. 54; 69th Report, Case No. 280, para. 23; 77th Report, Case No. 368, para. 17; 85th Report, Case No. 341, para. 193; 92nd Report, Case No. 376, para. 31.

30.

The Committee has recalled that in certain cases a prohibition of the establishment of an occupational organisation capable of "furthering and defending the interests" of its members may result from the "recognition" by the government of another organisation. The Committee of Experts on the Application of Conventions and Recommendations, in 1959, pointed out: "This is clearly the case, for example, when the law itself specifies the privileged organisation by name. It may also be the case where the regulations relating to 'recognition' impose on the organisations of workers concerned a form which may restrict their freedom of action and do not lay down 'objective' criteria for the recognition for a fixed period of an organisation for the purposes of 'representation' or 'negotiation'".

36th Report, Case No. 190, para. 205.

31.

With regard to legislation which provides that the union enjoying trade union status will lose that status if it ceases to be sufficiently representative in character and that in determining whether the association with the smaller membership should retain its trade union status, account shall be taken of the number of its members, its trade union activity and its contribution to the defence and protection of occupational interests. The Committee considered that the imprecise nature of the terms of the part of the section which is cited above might permit of abuse when the decision is taken by the Government whether or not to permit a particular trade union to retain its trade union status. The Committee pointed out that it would seem that the independence of occupational organisations in relation to the public authorities might be compromised if the legislator or the executive power can effect a discrimination between the various organisations concerned

which is not based on objective criteria, and even more so where the consequences of the distinction between the different organisations are to reserve to certain organisations a monopoly both in respect of the determination of conditions of employment (collective bargaining, etc.) and in respect of the representation and defence of the interests of the workers in relation to the public authorities.

36th Report, Case No. 190, paras. 196-198.

Union security clauses

See also: 17, 409.

32.

In certain cases where the deduction of union contributions and other forms of union protection were instituted, not in virtue of the legislation in force but as a result of collective contracts or established practice existing between both parties, the Committee has declined to examine the allegations made, basing its reasoning on the statement of the Committee on Industrial Relations appointed by the International Labour Conference in 1949, according to which Convention No. 87 can in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice. According to this statement, those countries - and more particularly those countries having trade union pluralism - would in no way be bound under the provisions of the Convention to permit union security clauses either by law or as a matter of custom, while other countries which allow such clauses would not be placed in the position of being unable to ratify the Convention.

13th Report, Case No. 96, paras. 130 and 131; 15th Report, Case No. 114, para. 59; 17th Report, Case No. 120, para. 95; 26th Report, Case No. 162, para. 18; 30th Report, Case No. 182, para. 108; 34th Report, Case No. 130, para. 19; Case No. 188, para. 34; 65th Report, Case No. 266, para. 59; 71st Report, Case No. 320, para. 43; 92nd Report, Case No. 376, para. 40; Case No. 455, para. 220; 96th Report, Case No. 492, para. 121; 119th Report, Case No. 621, para. 30.

33.

The Committee, reasoning on the basis of the declaration made, in 1949, by the Committee on Industrial Relations of the International Labour Conference, considered that legislation which provides that nobody shall be compelled to join or not to join a trade union, does not in itself infringe Conventions Nos. 87 and 98.

85th Report, Case No. 335, paras. 425 and 427.

34.

There are many examples of countries in which the law prohibits certain forms of union security arrangements and many others in which the law permits such arrangements, either formally or by reason of the fact that no legislation on the matter exists at all. The Committee has considered that the position is very different when the law imposes union security - either in the form of making union membership compulsory or by the making of union contributions payable in such circumstances as to amount to the same thing. The Committee has pointed out that when a worker can join a different union as a matter of law, but is still obliged to join a particular union - by law - if he wishes to retain his employment, such a requirement would seem to be incompatible with his right to join the organisation of his own choosing.

65th Report, Case No. 266, para. 60; 83rd Report, Case No. 303, paras. 190-194.

35.

Where union security arrangements operate which require membership of a given organisation as a condition of employment, there might be an unfair discrimination if unreasonable conditions were to be imposed upon persons seeking such membership.

15th Report, Case No. 114, para. 62.

Government pressure or favouritism

See also: 25.

36.

The Committee, while noting that the measures taken by the authorities of one country in application of an Immigration and Nationality Act relate to the sovereign right which every country has to decide who shall and who shall not be admitted to its territory, was of the opinion that, if the application of these measures were to influence workers in their free choice of a trade union or to result in workers being dismissed or otherwise prejudiced because of their trade union affiliations, they might infringe the principle that workers have the right to join trade unions of their own choosing.

14th Report, Case No. 95, para. 56.

37.

The question as to how far the attitude publicly adopted by a government towards a trade union organisation constitutes an infringement of the workers' right to belong to organisations of their own choosing would seem to depend essentially on factual circumstances; it might depend, for example, on the terms in which the government complained against expressed its point of view, on the conditions in which this view was brought to the notice of the public or of the workers concerned (press, utilisation of the machinery of State, etc.) and on any other elements which might make it possible to judge whether the position taken up by the government did or did not assume a coercive character or might probably have exercised pressure on the workers concerned.

27th Report, Case No. 166, paras. 79 and 81.

38.

The Prime Ministers of two countries had stated, respectively, that a certain union would not be recognised and that a specific federation would be dissolved by the Government. The Committee recommended that attention should be drawn to the danger of such statements being interpreted as intended to exert pressure on workers when exercising their right to join organisations of their own choosing.

85th Report, Case No. 415, paras. 241-246;
93rd Report, Case No. 494, paras. 333-335.

39.

Generally the fact that a government is able to grant the occupation of premises to a particular organisation or to evict a given organisation from premises which it has been occupying in order to grant them to another organisation may, even if this is not intended, lead to the favourable or unfavourable treatment of a particular trade union as compared with others, and in this way constitute an act of discrimination. More particularly, by according favourable or unfavourable treatment to a given organisation as compared with others, a government may be able to influence the choice of workers as to the organisation which they are going to join. Further, a government which deliberately acted in the above manner would also violate the principle laid down in Convention No. 87, that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly it would also violate the principle that the law of the land shall not be such as to impair, nor be so applied as to impair, the guarantees provided for in the Convention. The Committee has expressed the view that it would seem desirable that, if a government wishes to make available certain facilities to trade union organisations, these organisations enjoy equal treatment in this respect.

57th Report, Case No. 248, para. 28; 67th Report, Case No. 277, para. 60; 79th Report, Case No. 361, para. 98; 104th Report, Case No. 522, para. 44.

Restrictions concerning race, minimum number of members, supervisors and the structure of trade unions

40.

The prohibition of registration of mixed trade unions (consisting of workers of different races) is not compatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

24th Report, Case No. 145, para. 209.

41.

The Committee has recalled that the establishment of a trade union may be considerably hindered or even rendered

impossible when legislation fixes the minimum number of members of a trade union at obviously too high a figure, as is the case, for example, where legislation requires that a works union must have at least fifty founder members.

48th Report, Case No. 191, para. 72.

42.

The Committee has considered that the requirement of a minimum number of twenty members fixed by a legislation does not seem excessive and therefore does not in itself constitute an obstacle to the formation of a trade union.

90th Report, Case No. 335, para. 194.

43.

The Committee, while recognising that a provision that government employees could organise only in unions catering for them exclusively may be reasonable in certain circumstances, pointed out that the restriction was one which it might be desirable to reconsider at an appropriate time.

Fourth Report, Case No. 30, paras. 155 and 156;
32nd Report, Case No. 179, para. 16.

44.

By virtue of one local public service law, since the negotiation requires to be at the regional level, the negotiating organisation must also be one existing only at the regional level; such a restriction constitutes a limitation of the right of workers to establish and join organisations of their own choosing and to elect their representatives in full freedom.

54th Report, Case No. 179, para. 156.

45.

To establish a limitative list of occupations with a view to recognition of the right to associate would be contrary to the principle that workers, without distinction

whatsoever, must have the right to establish and to join the organisations of their own choosing.

79th Report, Case No. 393, para. 145.

46.

Discriminatory provisions, especially those involving preferential treatment for unions having no connection with unions outside the province, which may exercise pressure on workers to join a purely provincial union without ties rather than another are not in harmony with the generally accepted principle that workers should have the right to form and join organisations of their own choosing, and that the law of the land should not be such as to impair, nor should it be so applied as to impair, the exercise of this right. Moreover, they would not seem to be compatible with the principle that workers' organisations should have the right to establish and join federations and confederations of their own choosing and that such organisations, federations or confederations should have the right to affiliate with international organisations of workers.

49th Report, Case No. 211, paras. 233 and 234.

47.

As regards provisions which prohibit supervisory employees from joining workers' organisations, the Committee has taken the view that the expression "supervisors" should be limited to cover only those persons who genuinely represent the interests of employers.

66th Report, Case No. 179, para. 351.

3. Right to establish organisations "without previous authorisation"

Legal formalities and approval of by-laws

48.

In its report to the 1948 International Labour Conference, the Committee on Freedom of Association and Industrial Relations declared that "the States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations". Consequently, the formalities prescribed by national regulations concerning the constitution and functioning of workers' and employers' organisations are compatible with the provisions of that Convention, provided, of course, that the provisions in such regulations do not infringe the guarantees laid down in Convention No. 87.

First Report, Case No. 4, para. 47.

49.

The Committee has recalled that "the principle of freedom of association might very often remain a dead letter if employers and workers were required to obtain any previous authorisation to enable them to establish an organisation, be it authorisation concerning the formation of the trade union organisation itself, need to obtain discretionary approval of the constitution or rules of the organisation, or, again, authorisation for taking steps prior to establishment of the organisation". (1959 Report of the Committee of Experts on the Application of Conventions and Recommendations.) This does not mean that the founders of an organisation are freed from the duty of observing formalities as to publicity or other similar formalities which may be prescribed by law. However, such requirements must not be such as to be equivalent in practice to previous authorisation, or as to constitute such an obstacle to the establishment of an organisation that they amount in practice to outright prohibition. Even in cases where registration is optional, if such registration confers on the organisation the basic rights enabling it to "further and defend the interests" of its members, the fact that the authority competent to effect registration has discretionary power to refuse this formality leads to a situation

that is not very different from that in cases where previous authorisation is required.

84th Report, Case No. 433, paras. 71-73; 85th Report, Case No. 335, para. 447; 114th Report, Case No. 350, para. 42.

50.

A legal provision in virtue of which the right of association is subject to an authorisation given by a government department in its sole discretion is incompatible with the principle of freedom of association.

Fourth Report, Case No. 20, para. 110.

51.

A requirement that union rules shall comply with national statutory requirements does not constitute a violation of the generally accepted principle that workers' organisations should have the right to draw up their constitutions and rules in full freedom, if such statutory requirements themselves do not infringe the principle of freedom of association and if approval of the rules by the competent authority is not within the discretionary powers of such authority.

65th Report, Case No. 266, para. 29.

52.

Where the approval of union rules is within the discretionary powers of a competent authority this is not compatible with the generally accepted principle that workers' organisations should have the right to draw up their constitutions and rules in full freedom.

58th Report, Case No. 168, para. 78; 67th Report, Case No. 303, para. 276; 105th Report, Cases Nos. 473 and 477, para. 64.

53.

The requirement that a trade union shall have a registered office is a normal requirement in a large number of countries.

25th Report, Case No. 152, para. 238.

54.

A situation in which the approval of trade union rules by the administrative authorities as a necessary condition for the legal existence of the organisation is accompanied by a condition that such authorities shall at the same time be satisfied, in their own discretion, that the proposed organisation is justified in view of the economic and social interests of the community, is not compatible with the generally accepted principle that workers should have the right to establish organisations "without previous authorisation".

65th Report, Case No. 266, para. 34; 113th Report, Case No. 266, para. 54.

55.

A legislative provision which authorises the Secretary-General of the government, after consulting the appropriate ministries, to raise an objection to the setting up of a trade union within a period of three months from the date of registration of its by-laws is in contradiction with the basic principle according to which employers and workers should have the right to establish organisations of their choice without prior authorisation.

53rd Report, Case No. 232, paras. 54 and 55.

Registration

See also: 18, 21, 22, 49, 55, 139.

56.

While recognising that it may be legitimate for registration, in certain circumstances, to confer advantages on a trade union organisation in respect of such matters as representation for the purposes of collective bargaining, consultation by governments, or the nomination of delegates to international bodies, it should not, in normal circumstances, involve discrimination of such a character as to render non-registered organisations subject to special measures of police supervision of a nature which may restrict the exercise of freedom of association.

74th Report, Case No. 298, para. 45; 107th Report, Cases Nos. 251 and 414, para. 39.

57.

It is true that if prior permission for the establishment or functioning of a trade union were required from the public authorities as a condition for the granting of registration, this would undeniably constitute an infringement of the Convention. This, however, does not seem to be the case, when the registration of trade unions consists solely of a formality in which there is no question of infringing guarantees laid down by the Convention.

20th Report, Cases Nos. 72 and 122, para. 67; 102nd Report, Case No. 516, para. 33.

58.

The Committee considered it necessary to suggest to one Government that it should establish a system of registration by a registrar or other agency entirely independent of the local authorities and whose decisions would be subject to a right of appeal to the courts.

58th Report, Case No. 179, para. 385.

59.

The Committee has drawn attention to the importance which it attaches to the principle that workers' organisations should not be liable to be dissolved or suspended by administrative authority, and to the principle that appeals against the refusal or cancellation of registration of

organisations by Trade Union Registrars should lie to the courts (and not to the executive or administrative authority).

47th Report, Case No. 194, para. 111; 58th Report, Case No. 251, para. 611.

60.

In cases where the Registrar has to form his own judgment as to whether the conditions for the registration of a trade union have been fulfilled, although an appeal lies against his decisions to the courts, the Committee has referred to the observation made by the Committee of Experts on the Application of Conventions and Recommendations according to which, "the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal ... would only be able to ensure that the legislation had been correctly applied". The Committee has drawn attention to the desirability of defining clearly in the legislation the precise conditions which trade unions must fulfil in order to be entitled to registration and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not.

68th Report, Case No. 281, paras. 428 and 446; 70th Report, Case No. 194, para. 118; 74th Report, Case No. 308, para. 87 and Case No. 363, para. 224; 84th Report, Case No. 415, paras. 58 and 59.

61.

The Committee has recalled the importance which it attached to judges being able to deal with the substance of a case concerning a refusal to register to enable them to decide whether or not the provisions on which the administrative measures appealed against are based constitute a violation of the rights accorded to occupational organisations by Convention No. 87.

74th Report, Case No. 308, para. 87; Case No. 363, para. 224.

62.

The Committee has drawn attention to the risks of interference by the authorities responsible for effecting the registration of trade unions when registration can be refused not only because a sufficiently representative organisation already exists, but also because the Registrar is satisfied that an existing organisation is likely to become sufficiently representative. Such a situation does not appear to be compatible with the principle contained in Convention No. 87 according to which the law of the land should not be such as to impair, nor should it be so applied as to impair, the right of workers to form organisations of their own choosing without previous authorisation.

95th Report, Case No. 448, para. 125.

63.

The Committee has recalled that normal control of the activities of trade unions should be effected a posteriori and by the judicial authorities; and the fact that an organisation which seeks to enjoy the status of an occupational organisation might in certain cases engage in activities foreign to trade union activities does not appear to constitute sufficient reason for subjecting trade union organisations a priori to control with respect to their composition and with respect to the composition of their management committees. The Committee considered that refusal to register a union because the authorities, in advance and of their own independent judgment, consider that it might be politically undesirable, would seem tantamount to submitting the compulsory registration of a trade union to previous authorisation on the part of the authorities, which is not compatible with the provisions of Convention No. 87.

68th Report, Case No. 239, paras. 31 and 32.

B. FREE FUNCTIONING OF ORGANISATIONS

1. Right to draw up by-laws and rules

See also: 79, 149.

Compulsory clauses

64.

The provisions in the legislation of one country required the inclusion in trade union rules of a declaration of respect for the principles and purpose of the national community, an express renunciation of any and every form of activity, internal or external, which is contrary to the interests of the nation and a recognition of the fact that the trade union constitutes a factor required for active co-operation with all the other factors of the national economic system, and consequently a repudiation of the class war. The Committee considered that such provisions, inasmuch as they appeared to imply a degree of subordination of trade unions to the economic policy of the Government, were not compatible with the generally accepted principles that workers' organisations should have the right to draw up their constitutions and rules, to organise their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair, or be so applied as to impair, the effective enjoyment of this right.

65th Report, Case No. 266, paras. 35-37.

65.

In one case, where the legislation provided that it should be the exclusive right of the general assembly of a trade union to approve federation or amalgamation with other unions, the Committee observed that the Government, interpreting the provisions concerning the formation and functioning of a trade union organisation, has demanded compliance with a requirement relating to the actual existence of an organisation and having the purpose of guaranteeing the right of the future members to participate democratically in

the establishment of the organisation. The Committee also considered that the legislation in question did not violate trade union rights.

78th Report, Case No. 388, paras. 282-287.

66.

In a case the legal prescription of certain majority votes for the adoption of resolutions by the assembly of a trade union related to a question of the highest importance for the life of the organisation and the rights of its members. The Committee considered that, in cases like this, involving basic matters relating to the existence and structure of a union and the fundamental rights of its members (approval of by-laws and their amendments, establishment of union contributions, exclusion of members, amalgamation, affiliation or withdrawal, dissolution), the regulation by law of the majority votes for the adoption of the decisions involved does not imply interference contrary to the Convention, provided that this regulation by law is not of such a nature as seriously to impede the running of a trade union in accordance with prevailing conditions, making practically impossible the adoption of the decisions proper to it.

79th Report, Case No. 408, para. 181.

67.

Legislation which minutely regulates the internal election procedures of a trade union, determining the composition of the principal organs, the days on which meetings are to take place, the precise date for the annual general assembly and the date on which the term of trade union officers shall come to an end, is incompatible with the rights afforded to trade unions by Convention No. 87.

27th Report, Case No. 159, paras. 360-362.

68.

The insertion in the rules of a trade union, on the decision of the public authorities, of a clause whereby the trade union must forward annually to the Ministry a series of documents, namely a copy of the minutes of the last general assembly, indicating precisely the names of the members present, a copy of the General Secretary's report, as approved by the Assembly, a copy of the Treasurer's report, etc.,

failure to do so within a prescribed period resulting in the union being deemed to have gone into liquidation, is incompatible with the principles of freedom of association.

103rd Report, Cases Nos. 422, 473 and 477, paras. 160-163.

Model by-laws

69.

Any obligation on a trade union to base its constitution on a compulsory model (apart from certain purely formal clauses) would be to disregard the rules which ensure freedom of association. The case is quite different when the government merely makes specimen constitutions available to organisations in process of creation without requiring them to accept an obligatory model. The preparation of specimen constitutions and rules for the guidance of trade unions which there is no obligation to accept, does not, provided that the circumstances are such that there is no compulsion or pressure in fact to accept them in practice, necessarily involve any interference with the right of organisations to draw up their constitutions and rules in full freedom.

Sixth Report, Case No. 11, paras. 107 and 108; 66th Report, Case No. 298, paras. 516 and 518.

2. Right freely to elect representatives

General principles

See also: 67, 140.

70.

The Committee has drawn attention to the importance which it attaches to the principle that workers and their organisations should have the right to elect their representatives in full freedom and that the latter should have the right to put forward claims on their behalf.

22nd Report, Case No. 148, para. 94.

71.

Since the creation of workers' councils in a country and councils of employers could constitute a preliminary step towards the setting up of independent and freely established workers' and employers' organisations, the Committee has suggested to the Government of the country concerned that all the offices in the councils of workers, without exception, shall be occupied by persons freely elected by all workers without any disqualification based on their part in or attitude towards past events.

85th Report, Cases Nos. 294, 383, 397 and 400, para. 373.

Racial discrimination

72.

Legislative provisions which reserve to Europeans the right to be members of the executive committees of mixed trade unions (made up of workers of different races), are incompatible with the principle that workers' organisations should have the right to elect their representatives in full freedom.

24th Report, Case No. 145, para. 209.

Leaders employed in the profession or undertaking

73.

If the national legislation lays down that all trade union leaders must belong to the occupation in which the organisation functions, there is a danger that the guarantees provided for in Convention No. 87 may be set aside. In fact, in such cases the laying off of a worker who is a trade union official can, as well as making him forfeit his position as a trade union official, affect the freedom of action of the organisation and its right to freely elect its representatives, and even encourage acts of interference by employers.

14th Report, Case No. 105, paras. 135-137; 32nd Report, Case No. 179, para. 20; 48th Report, Case No. 193, para. 51; 86th Report, Case No. 451, para. 140; 101st Report, Case No. 526, para. 521.

Political opinions or activities

74.

Where a body representing the workers in a dispute is elected by those workers, the right to elect their representatives in full freedom is restricted if some only of those representatives, on the basis of their political opinions, are chosen by a government as persons with whom it will deal in an effort to mediate in the dispute. Where the law of the land provides that the government may address itself only to those who appear to be the representatives of the workers of an undertaking and, in effect, to choose those with whom it will deal, any selection on such a political basis as to eliminate from those dealings, even indirectly, the leaders of the organisation most representative of the class of workers concerned would appear to result in the law of the land being so applied as to impair the right of the workers to choose their own representatives.

24th Report, Case No. 126, para. 94.

75.

A law which debars from trade union office for a period of ten years "any person taking part in political activities of a Communist character" and which lists a number of legal

presumptions whereby any person can be held to be "responsible for taking part in political activities of a Communist character" could involve a violation of the principle laid down in Convention No. 87 which states that employers' and workers' organisations have the right "to elect their representatives in full freedom, to organise their administration and activities" and that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

24th Report, Case No. 146, para. 273.

76.

The Committee took the view that a law is contrary to the principles of freedom of association when a trade unionist can be barred from union office and membership, because in the view of the Minister his activities might further the interests of Communism.

85th Report, Cases Nos. 300, 311 and 321, paras. 107 and 109.

Intervention by the authorities

See also: 116-127.

77.

A recommendation by the political party in power, the Council of Ministers and the legislative body concerning the presidency of the central trade union organisation in a country is incompatible with the principle establishing the right of organisations to elect their representatives in full freedom.

23rd Report, Case No. 111, para. 160.

78.

The fact that the authorities should intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of the election, seriously challenges the principle whereby the

trade union organisations are entitled to elect their representatives in full freedom.

73rd Report, Case No. 348, para. 112.

79.

The Committee has drawn attention to the generally accepted principle that it should be left to the workers' organisations themselves to make provision, in their laws or rules, as to the majority of votes requisite for election to union office.

58th Report, Case No. 179, para. 388.

80.

Legislation which requires candidates for trade union office to have obtained the approval of the Provincial Governor, given on the basis of a report from the police investigation department, is incompatible with the principle that employers' and workers' organisations should have the right to elect their representatives in full freedom.

26th Report, Cases Nos. 134 and 141, para. 103.

81.

The following provisions are incompatible with the right to hold free elections, namely those which involve interference by the public authorities in various stages of the electoral process, beginning with the obligation to submit the candidates' names beforehand to the Ministry of Labour, together with personal particulars, continuing with the presence of a representative of the Ministry of Labour or the civil or military authorities at the elections, and culminating with the approval of the elections by ministerial decision, without which they are invalid.

86th Report, Case No. 451, paras. 135 and 136.

82.

The presence during trade union elections of an official of the Prefecture is liable to infringe freedom of association, and, in particular, to be incompatible with the

principle according to which workers' organisations should have the right to elect their representatives in full freedom and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

50th Report, Case No. 240, para. 40; 52nd Report, Case No. 239, para. 192.

83.

The Committee has observed that there exist in a number of countries legal provisions whereby an official who is independent of the public authorities - such as a trade union registrar - may take action, subject to an appeal to the courts, if complaint is made or there are reasonable grounds for supposing that irregularities have taken place in a trade union election, contrary to the rules of the organisation concerned. This, however, is quite a different situation from that which arises when the elections can be valid only after being approved by the administrative authorities. The Committee has considered that the requirement of approval by the authorities of the results of trade union elections is not compatible with the principle of freedom of election.

65th Report, Case No. 266, paras. 45 and 47; 86th Report, Case No. 451, para. 135.

Re-election

84.

The ban on the re-election of trade union officials is not compatible with Convention No. 87. Such a ban, moreover, could have serious repercussions on the normal development of a trade union movement lacking in persons capable of adequately carrying out the functions of trade union office.

86th Report, Case No. 451, para. 143.

Criminal record

See also: 140.

85.

As regards legislation which provides that a sentence by any court whatsoever, except for political offences, to a form of imprisonment of one month or more, is a ground incompatible with, or disqualifying from, the holding of posts involving the leadership or administration of a trade union, the Committee has taken the view that such a general provision could be interpreted in such a way as to exclude from responsible trade union posts any individuals convicted for activities connected with the exercise of trade union rights such as a violation of the laws governing the press, and thus to curtail unduly the right of trade union leaders to elect their representatives freely.

Sixth Report, Case No. 40, para. 513; 86th Report, Case No. 451, para. 141.

3. Right to organise administration and activities and to formulate programmes

General principles

86.

Freedom of association implies not only the right for workers and employers to form freely associations of their own choosing but also the right, for the industrial associations themselves, to pursue lawful activities in defence of their occupational interests.

Sixth Report, Case No. 12, para. 205.

87.

Bearing in mind the principle that workers' organisations should have the right to organise their administration and activities, the Committee considered that the exercise of governmental supervision might impair the enjoyment of their trade union rights.

Sixth Report, Case No. 50, para. 858.

Racial discrimination

88.

Legislative provisions concerning the organisation, in registered mixed trade unions, of separate branches for workers of different races, and the holding of separate meetings by the separate branches are not compatible with the generally accepted principle that workers' organisations should have the right to draw up their constitutions and rules and to organise their administration and activities.

24th Report, Case No. 145, para. 209.

Administration of organisations

See also: 66, 67, 68.

89.

The Committee has drawn attention to the importance which it has always attached to the principle that in every democratic trade union movement the congress is the supreme trade union authority.

23rd Report, Case No. 111, para. 164.

90.

In view of the fact that in every democratic trade union movement the annual congress of members is the supreme trade union authority which determines the regulations governing the administration and activities of trade unions and which lays down their programme, the prohibition of such congresses would seem to involve an infringement of trade union rights.

First Report, Case No. 8, para. 66.

91.

When legislation is applied in such a manner as to impede the trade union organisations in using the services of experts who were not necessarily elected officers, such as industrial advisers, lawyers or attorneys able to represent them in judicial or administrative dealings, there would be serious doubt as to the compatibility of such provisions with Article 3 of Convention No. 87, according to which workers' organisations shall have the right, inter alia, to organise their administration and activities.

90th Report, Case No. 335, para. 201.

Activities and programmes

See also: 11, 64, 234.

92.

Any provision which gave the authorities, for example, the right to restrict trade union activities in relation to the activities and objects pursued by trade unions in the vast majority of countries for the furtherance and defence of the interests of their members, or the right to interfere with the freedom of a trade union to fix the contributions of its members and to administer and expend its funds as it wishes on normally lawful trade union purposes, would be incompatible with the principles of freedom of association.

48th Report, Case No. 191, para. 77.

93.

The Committee considered that the extent to which the part played by the trade unions in organising work competition and undertaking propaganda for production, or the carrying out of economic plans, is consistent with the fulfilment by the trade unions of their responsibility for protecting the interests of the workers depends on the degree of freedom enjoyed by the trade unions in other respects.

21st Report, Case No. 19, para. 36; 22nd Report, Case No. 58, para. 52.

94.

The Committee considered that, while it is not called upon to express an opinion as to the desirability of entrusting the administration of social insurance and the supervision of the application of social legislation to occupational associations rather than to administrative state organs except in so far as such a measure might restrict the free exercise of trade union rights, this might be the case: (1) if the trade unions exercised discrimination in administering the social insurance funds made available to them for the purpose of exercising pressure on unorganised workers; (2) if the independence of the trade union movement should thereby be compromised.

23rd Report, Case No. 111, para. 134.

95.

Legislation which permits the competent authorities to ban any organisation which carries on any normal trade union

activity, such as campaigning for a minimum wage, is incompatible with the generally accepted principle that the public authorities should refrain from any interference which would restrict the right of workers' organisations to organise their activities and to formulate their programmes or impede the lawful exercise of this right.

85th Report, Cases Nos. 300, 311 and 321, paras. 123 and 124.

Political activity and trade union independence

See also: 339-343.

96.

In order that trade unions may be sheltered from political vicissitudes and in order that they may avoid being dependent on the public authorities, the Committee has considered that it is desirable that occupational organisations, on the one hand, should limit the field of their activities, without prejudice to the freedom of opinion of their members, to the occupational and trade union fields, and that the government, on the other hand, should refrain from interfering in the operation of trade unions.

Sixth Report, Case No. 2, para. 1012.

97.

It would be desirable to have regard, in the normal development of the trade union movement, to the principles enunciated in the resolution on the independence of the trade union movement adopted by the International Labour Conference at its 35th Session (1952) that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the

trade union movement or its social or economic functions irrespective of political changes in the country.

Sixth Report, Case No. 40, para. 563; 12th Report, Case No. 61, para. 483; Eighth Report of the ILO to the United Nations, para. 305; 23rd Report, Case No. 111, para. 118; 27th Report, Case No. 156, para. 266; 51st Report, Case No. 233, para. 81; 84th Report, Case No. 423, para. 77; 85th Report, Case No. 335, para. 430; 90th Report, Case No. 422, para. 268; 108th Report, Case No. 530, para. 51; 110th Report, Case No. 519, para. 76.

98.

The Committee has reaffirmed the principle expressed by the International Labour Conference in the resolution concerning the independence of the trade union movement that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

21st Report, Case No. 19, para. 29; 22nd Report, Case No. 58, para. 35; 23rd Report, Case No. 111, para. 121; 27th Report, Case No. 143, para. 138; Case No. 160, para. 477; 110th Report, Case No. 519, para. 76.

99.

If trade unions are prohibited in general terms from engaging in any political activities this may raise difficulties by reason of the fact that the interpretation given to the relevant provisions in practice may change at any moment and considerably restrict the possibility of action of the organisations. It would therefore seem that States should be able, without prohibiting in general terms political activities of occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations, which had lost sight of the fact that their fundamental objective should be the economic and social advancement of their members.

84th Report, Case No. 423, para. 77; 85th Report, Case No. 335, paras. 431 and 432; 90th Report, Case No. 422, para. 268; 108th Report, Case No. 530, para. 52.

4. Financial administration of trade unions

Union dues

See also: 19, 34, 66, 92.

100.

A restriction imposed by law as to the amount which a federation may receive from the unions affiliated to it may appear to be contrary to the generally accepted principle that workers' organisations should have the right to organise their administration and activities and those of the federations which they form.

Sixth Report, Case No. 50, paras. 850 and 851;
65th Report, Case No. 266, para. 31.

Protection and control of trade union funds

101.

Measures for the protection of trade union funds against misuse may be particularly necessary in the early stages of the development of trade unions, but they are always liable to be applied in a manner involving serious interference with the principle of freedom of association.

First Report, para. 35.

102.

In one case the legislation of one country permitted, in exceptional circumstances, the intervention of the Government in the administration of trade union funds. Before intervening, the General Directorate of Labour was required to request the General Directorate of Internal Revenue to verify the accounts, and inspect the administration and investment of the funds. Only on report of the latter authority was the General Directorate of Labour able, if it deems it necessary for the protection of the interests of the trade union or in case of absence or disability of its responsible leaders, to make an official responsible for the administration and investment of the union funds. This intervention had to be limited to economic administration

and could not extend to trade union activities proper. In his administration, the official had to conform to the rules of the trade union and to the decisions taken by its general assembly; he had to act as though he were himself an elected leader of the union. Finally, the General Directorate of Labour was required to end the intervention when the causes which motivated it no longer existed. The Committee emphasised the possibilities of abuse entailed by such a procedure - however exceptional and temporary it may be - and recommended a revision of the legislation in question.

Fourth Report, Case No. 10, para. 87.

103.

While provisions contained in many legislations require trade union accounts to be audited, either by an auditor appointed by the trade union or, less frequently, appointed by the Registrar of Trade Unions, it is generally accepted that such auditor shall possess the required professional qualifications and be an independent person. Therefore, a provision which reserves to the government the right to audit trade union funds is not consistent with the generally accepted principle that trade unions should have the right to organise their administration and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

52nd Report, Case No. 191, para. 120.

104.

Legislation imposing the obligation for a trade union to have its account books stamped by the Ministry of Labour, and its pages numbered, before they are taken into use appears to aim only at preventing fraud. The Committee took the view that such a requirement did not constitute a breach of trade union rights.

79th Report, Case No. 393, paras. 153 and 154.

105.

The Committee has observed that, in general, trade union organisations appear to agree that legislative provisions requiring, for instance, financial statements to be annually presented to the authorities in a prescribed form and the submission of other data on points which may not seem clear

in the said statements, do not per se infringe trade union autonomy. In this connection the Committee has recalled that measures of supervision over the administration of trade unions may be useful if they are employed only to prevent abuses and to protect the members of the trade union themselves against mismanagement of their funds. However, it would seem that measures of this kind may, in certain cases, entail a danger of interference by the public authorities in the administration of trade unions and that this interference may be of such a nature as to restrict the rights of organisations or impede the lawful exercise thereof, contrary to Article 3 of Convention No. 87. It may be considered, nevertheless, that there is a certain measure of guarantee against such interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where he is himself subject to the control of the judicial authorities.

83rd Report, Case No. 399, para. 285.

106.

The legislation of one country provided that the authorities may require presentation of balance sheets where they deem this advisable (in addition to the accounts for the ordinary financial year). According to these provisions, the obligation to make the balance sheets available did not appear to be a general one, applying to all organisations; the authorities seemed able to impose it, at their discretion, on particular organisations only. Further, the legislation enabled the Audit Department to undertake any kind of audit called for by a government department, trade union authority or workers' central organisation. The Committee considered that these rules should be applied only in exceptional cases when justified by grave circumstances - for instance presumed irregularities in the annual statement or irregularities reported by members of the organisation - so as to avoid any discrimination between one trade union and another and to preclude the danger of excessive intervention by the authorities which might hamper a union's exercise of the right to organise its administration freely, and also to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential.

83rd Report, Case No. 399, paras. 286 and 287.

107.

The Committee has drawn attention to the importance of the principle whereby the property of trade unions should enjoy adequate protection.

97th Report, Case No. 519, para. 18.

Financial independence

See also: 165.

108.

Various systems of subsidising workers' organisations have very different consequences according to the form which they assume, the spirit in which they are conceived and applied and the extent to which the subsidies are granted as a matter of right in virtue of statutory provisions or are granted in the discretion of a public authority. The repercussions which financial aid may have on the autonomy of trade union organisations will depend essentially on circumstances; they cannot be assessed by applying general principles: they are a question of fact which must be examined in each case in the light of the circumstances of the case.

19th Report, Case No. 121, para. 180; 75th Report, Case No. 341, para. 101.

109.

The right of workers to set up the organisations of their own choice and of the freedom of such organisations to draft their own statutes and internal regulations and to organise their own management and activities presuppose financial independence. Financial independence implies that workers' organisations should not be financed in such a way as to allow the public authorities to enjoy discretionary powers over them.

24th Report, Case No. 121, para. 74;
75th Report, Case No. 341, para. 106.

110.

Provisions governing the financial arrangements of workers' organisations should not be of such a character as to give the public authorities discretionary powers over them.

25th Report, Case No. 152, para. 242.

111.

A system whereby workers are bound to pay contributions to a public organisation that finances trade union organisations constitutes a serious threat to the independence of these organisations.

75th Report, Case No. 341, para. 106.

112.

While trade union training deserves encouragement, it should be provided by the unions themselves, which can of course take advantage of any material or moral assistance which the government may offer to them.

103rd Report, Case No. 385, para. 140.

5. Non-interference by the public authorities

Control over the internal activities of trade unions

See also: 63, 81, 82, 83.

113.

Legislation which accords to the Minister the right, in his entire discretion, to investigate the internal affairs of a trade union merely if he considers it necessary in the public interest, is not in conformity with the principles that workers' organisations should have the right to organise their administration and activities without any interference on the part of the public authorities which would restrict this right or impede the lawful exercise thereof.

95th Report, Case No. 448, paras. 143 and 145.

114.

The principles established in Article 3 of Convention No. 87 do not prevent the control of the internal acts of a trade union if those internal acts violate legal provisions or rules. Nevertheless, in order to guarantee an impartial and objective procedure, this control should be exercised by the relevant judicial authority.

73rd Report, Case No. 348, para. 114; 93rd Report, Cases Nos. 283, 329 and 425, para. 156;
101st Report, Case No. 503, para. 378;
114th Report, Case No. 510, para. 59;
Cases Nos. 574, 588 and 593, para. 228;
116th Report, Case No. 385, para. 187;
Case No. 558, para. 151.

115.

There should be outside control only in exceptional cases, when there are serious circumstances justifying this course, since otherwise there would be a risk of limiting the right that workers' organisations have, by virtue of Article 3 of Convention No. 87, to organise their administration and activities without interference by the public authorities which would restrict this right or impede its

lawful exercise. The Committee considered that a law which confers the power to intervene on a judicial official against whose decisions appeal may be made to the Supreme Court, and which lays down that a request for intervention must be supported by a considerable part of the occupational category in question, does not constitute a violation of these principles.

118th Report, Case No. 559, paras. 178 and 179.

Removal of executive committees and the placing of trade unions under control

116.

The appointment by the government of persons to administer the central national trade union on the ground that such a measure was rendered necessary by the corrupt administration of the unions would be incompatible with freedom of association in a normal period.

25th Report, Case No. 140, para. 269; 65th Report, Case No. 266, para. 49.

117.

The Committee has drawn attention, with respect to the placing of certain unions under control, to the importance which it attaches to the principle that the public authorities should refrain from any interference which would restrict the right of workers' organisations to elect their representatives in full freedom and to organise their administration and activities.

30th Report, Case No. 172, para. 204; 36th Report, Case No. 192, para. 105; 41st Report, Case No. 199, para. 69; 75th Report, Case No. 369, para. 39; 81st Report, Case No. 385, para. 140; 108th Report, Case No. 510, para. 255; 109th Report, Case No. 552, para. 85; 112th Report, Case No. 554, para. 140; 114th Report, Cases Nos. 574, 588 and 593, para. 227.

118.

Legislation which accords to the public authorities the power to remove the management committee of a union whenever, in their discretion, they consider that they have "serious and duly demonstrated reasons" and which empowers the government to appoint management committees to replace the elected committees of trade unions, are not compatible with the principles of freedom of association. These provisions can in no way be compared with those which, in some countries, make it possible for the courts to declare an election invalid for specific reasons defined by law.

65th Report, Case No. 266, paras. 49 and 50.

119.

While recognising that certain events were of an exceptional kind and may have warranted intervention by the authorities, the Committee considered that for the taking over of a trade union to be admissible, it must be temporary and aimed solely at permitting the organisation of free elections.

112th Report, Case No. 554, para. 138.

120.

The power conferred on a person with a view to facilitating the normal functioning of a trade union organisation should not be such as to lead to limitations on the right of trade union organisations to draw up their own rules and regulations, to elect their representatives, to organise their administration and to formulate their programmes.

114th Report, Cases Nos. 574, 588 and 593, para. 232.

Removal or suspension of trade union leaders

121.

The Committee has pointed out that the removal from office by the government of trade union leaders is a serious infringement of the free exercise of trade union rights and has drawn attention to the desirability of refraining from any governmental interference in the performance by trade union leaders of trade union functions to which they have been freely elected by the members of the trade unions.

21st Report, Case No. 19, para. 33.

122.

A situation in which powers are given to the administrative authorities to remove trade union executive committees and to depose trade union leaders from their trade union office, by reason of their political activities, or where irregularities in the finances or elections of trade unions have been detected, etc., may give rise to abuse. The Committee has drawn attention to the desirability of amending this procedure and of providing the necessary safeguards to ensure that it shall not be utilised in such a manner as to infringe the free exercise of trade union rights.

36th Report, Case No. 185, para. 169; 50th Report, Case No. 240, para. 50; 58th Report, Case No. 234, paras. 570 and 571; 65th Report, Case No. 266, para. 49; 73rd Report, Case No. 348, para. 113; 79th Report, Case No. 393, para. 163; 83rd Report, Cases Nos. 283, 329 and 425, para. 156; 116th Report, Case No. 385, para. 187.

123.

Since the suspension of the results of elections may have similar effects to the suspension of the organisation itself, the Committee has pointed out that measures of suspension adopted by an administrative authority involve

the risk that they may appear arbitrary, even when they are provisional and temporary and are followed by judicial action.

73rd Report, Case No. 348, para. 114; 116th Report, Case No. 558, para. 151.

124.

Trade union leaders having been removed from office not by the decision of members of the trade unions concerned but by the administrative authority and not, it would seem, because of infringement of specific provisions of the trade union rules or of the law, but because the said administrative authorities had considered these trade union leaders unsuitable to maintain "discipline" in their unions, the Committee was of the view that measures of this kind appear obviously incompatible with the principle that trade union organisations have the right to elect their representatives freely and to organise their administration and activities.

116th Report, Case No. 385, para. 188.

125.

In order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, plaints brought before labour courts by an administrative authority challenging the results of trade union elections should not - pending the final outcome of the judicial proceedings - have the effect of suspending the validity of such elections.

113th Report, Case No. 266, para. 75.

126.

The Committee considered that it would be necessary to delete the provisions appearing in legislation enjoining respect for "the higher interests of the Nation and the common good", on the basis of which labour courts are to decide whether the conduct of trade union officers warrants their dismissal, in view of the fact that these provisions are drafted in terms so wide that they fail to afford any precise criteria for judicial decision.

113th Report, Case No. 266, para. 75.

127.

In the Committee's opinion it is of paramount importance that measures for the dismissal, suspension or disqualification of trade union officials as a penalty provided by law should not become enforceable except on the basis of a firm sentence on the part of the competent judicial authority, or, in any case, after the period allowed for the submission of an appeal has elapsed without such an appeal having been made.

114th Report, Case No. 510, para. 62.

Miscellaneous

128.

One Government having declared that the imposition of a curfew is a measure taken for the sole purpose of preserving law and order and is not specifically aimed at the activities of trade unions, the Committee considered, nevertheless, that a curfew, if unreasonably applied, might seriously curtail the exercise of trade union rights.

25th Report, Case No. 136, para. 152.

129.

The Committee has drawn attention to the importance of having regard, when taking the necessary measures to fulfil a responsibility for the maintenance of public order, to the possibility of the exercise of trade union rights being endangered, and of taking adequate steps to ensure that police officers observe the provisions of Convention No. 87.

52nd Report, Case No. 239, para. 191.

C. DISSOLUTION AND SUSPENSION OF ORGANISATIONS

1. By legislative or administrative measures

See also: 59.

130.

The Committee has emphasised the importance which it attaches to the generally accepted principle that employers' and workers' organisations should not be subject to suspension or dissolution by administrative authority.

Sixth Report, Case No. 3, para. 1025; 14th Report, para. 85; 27th Report, Case No. 143, para. 187; 28th Report, Case No. 167, para. 135; 30th Report, Case No. 172, para. 187; 44th Report, Case No. 194, para. 110; 48th Report, Case No. 191, para. 70; Case No. 193, para. 44; 49th Report, Case No. 211, para. 228; 65th Report, Case No. 266, para. 55; 67th Report, Case No. 303, para. 322; 72nd Report, Case No. 260, para. 92; 78th Report, Case No. 360, para. 183; 97th Report, Case No. 519, para. 18; 101st Report, Case No. 419, para. 194; 109th Report, Case No. 552, para. 85; 110th Report, Case No. 503, para. 45.

131.

Dissolution by the executive branch of the government acting in the exercise of legislative functions like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee and to which the Committee continues to attach the greatest importance.

17th Report, Case No. 109, para. 116; 57th Report, Case No. 248, para. 45; 60th Report, Case No. 191, para. 158; 68th Report, Case No. 313, para. 55; 84th Report, Case No. 403, para. 39; 105th Report, Case No. 537, para. 296.

132.

The dissolution of the trade unions decreed pursuant to the law respecting full powers, constitutes a serious infringement of the exercise of trade union rights.

Sixth Report, Case No. 2, para. 1012.

133.

When a Government had dissolved certain trade union organisations during a period of serious internal troubles comparable to actual civil war, the Committee pointed out that it has always taken account of such circumstances when considering measures taken by a government against trade union organisations implicated in such events.

17th Report, Case No. 109, para. 118.

134.

The suspension, by administrative authority, of the legal personality of a trade union is not compatible with Article 4 of Convention No. 87.

87th Report, Case No. 408, para. 263.

135.

Bearing in mind the powers conferred by the law of one country on occupational associations with "trade union status", the Committee considered that the possibility under the legislation of the adoption with immediate effect of measures similar in character to the suspension or dissolution of a workers' organisation by administrative authority constituted a violation of the provisions of Article 4 of Convention No. 87. In matters of this kind the Committee had to look beyond the form of the action taken to its substantial nature and effect. While the organisations in question may not have been formally suspended or dissolved, the action taken in respect of them was tantamount to suspension or dissolution in its practical effect. Convention No. 87 as a guarantee of fundamental freedom was concerned not only with words but also with realities.

74th Report, Case No. 308, para. 85; 83rd Report, Case No. 399, para. 288; 101st Report, Case No. 503, para. 373.

136.

Legislation which accords to the Minister the power to order the cancellation of the registration of a trade union in his entire discretion and without any right of appeal to the courts, is contrary to the principles of freedom of association.

95th Report, Case No. 448, paras. 143 and 145.

2. Intervention of the judicial authorities

137.

Where suspension measures are issued by administrative authority, there may be a danger that they will appear to be arbitrary, even though they are issued only temporarily or for a limited time and as a preliminary to subsequent court action.

> Sixth Report, Case No. 11, paras. 63 and 64; 65th Report, Case No. 266, para. 54; 74th Report, Case No. 363, para. 224; Case No. 308, para. 86; 83rd Report, Cases Nos. 283, 329 and 425, para. 156; 101st Report, Case No. 503, para. 374.

138.

If the principle that an occupational association may not be subject to suspension or dissolution by administrative decision is to be properly applied, it is not sufficient for the law to grant the right of appeal against such administrative decisions, but that the latter should not take effect until the expiry of the statutory period for lodging an appeal or until the confirmation of such decisions by a judicial authority.

> 74th Report, Case No. 363, para. 224; Case No. 308, para. 86; 83rd Report, Case No. 399, para. 288; 101st Report, Case No. 503, para. 374; 113th Report, Case No. 266, para. 87.

139.

The Committee has emphasised the importance which it attaches to the judges being able to deal with the substance of a case, to enable them to decide whether or not the provisions on which the administrative measures appealed against are based constitute a violation of the rights accorded to occupational organisations by Convention No. 87. In this respect it has recalled the statements made by it and by the Committee of Experts in regard to refusal to register an organisation; in effect, if the administrative authority has a discretionary right to register or cancel the registration of a trade union, the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; the judges hearing such an appeal could only ensure that the legislation had been correctly

applied. The same problem may well arise in the event of the suspension or dissolution of an occupational organisation.

83rd Report, Cases Nos. 283, 329 and 425, para. 156.

140.

Under a number of legal systems persons are disqualified from being elected to or remaining in trade union office in the event of their being convicted of certain serious penal offences of a non-political nature. In such cases the trade union must take steps, within a prescribed reasonable time, to remove the person concerned from his union office, on pain of sanction which may vary in nature - fine, decertification as a bargaining agent, or even dissolution, provided that the dissolution has to be ordered by the ordinary courts following a procedure attended by all the guarantees afforded by due process of law. If a union in such a case is dissolved by the courts because it has not, within a reasonable time, removed one of its officers following such a conviction, a government might be able to argue that this did not necessarily constitute an infringement of the principle that workers' organisations should have the right to elect their representatives in full freedom and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof or of the principle that the law of the land should not be such as to impair, nor should it be so applied as to impair, the right to elect representatives in full freedom. It may also be defensible to enact legal provisions to the effect that where a parent organisation is dissolved by a court of law because it had maintained a convicted person in office in such cases, its branches or locals may also be dissolved, or that, if the dissolved parent organisation is a federation or international union, its constituent unions or affiliated unions shall cease to belong - as they would automatically in fact - to the dissolved federation or international union.

49th Report, Case No. 211, para. 230.

3. Voluntary dissolution

See also: 66.

141.

The dissolution of a trade union organisation having been decided by the free will of a congress convened in a regular manner by all the workers concerned, the Committee was of the opinion that this dissolution or any consequence resulting from it would not be regarded as having constituted an infringement of trade union rights.

73rd Report, Case No. 338, para. 42.

4. Reduction in the number of members

142.

A legal provision which obliges a trade union to wind itself up if its membership falls below twenty or forty depending on whether it is an undertaking union or an occupational union, does not in itself constitute an infringement of the exercise of trade union rights provided that such winding-up is attended by all necessary legal guarantees to avoid any possibility of an abusive interpretation of the provision, namely the right of appeal to a court of law.

20th Report, Cases Nos. 72 and 122, para. 68.

5. Liquidation of trade union funds and assets

143.

The Committee has accepted the criterion that, when an organisation is dissolved, its assets should be provisionally sequestrated and eventually distributed among its former members or handed over to the organisation that succeeds it.

24th Report, Case No. 144, para. 256; 45th Report, Case No. 211, para. 108; 110th Report, Case No. 519, para. 82.

144.

The Committee has considered that the fact that the Registrar, on dissolution of a union, acts as an official liquidator, is not in itself a matter for criticism.

25th Report, Case No. 152, para. 244.

145.

The Committee has noted that, under the law of one country, it seems to be considered that the organisations to which the property of dissolved unions is transferred are the "successors" of those unions. In this connection, the Committee has pointed out, however, that that expression should not be taken to include unions which, in fact, merely "take over" from dissolved unions, but unions which pursue the aims for which the dissolved unions were voluntarily established - and pursue them in the same spirit. Since the unions in question had been dissolved by order of the Government and since the organisation to which the property of the dissolved unions had been transferred by virtue of the law was precisely the one which was alleged to be a "tool of the régime", the Committee considered that the procedure adopted by the Government in this connection might offer scope for abuse and, in any case, did not appear to be consistent with the principle regarding the distribution of assets to successor trade unions.

110th Report, Case No. 519, paras. 82-86.

D. RIGHT OF WORKERS' AND EMPLOYERS' ORGANISATIONS TO ESTABLISH FEDERATIONS AND CONFEDERATIONS

See also: 46, 65, 66, 140.

146.

The Committee has recalled the importance that should be attached to the principle laid down in Article 2, Convention No. 87, that workers shall have the right to establish and join organisations of their own choosing, a principle that implies for the organisations themselves the right to establish and join federations and confederations of their own choosing.

83rd Report, Case No. 393, para. 73.

147.

The acquisition of legal personality by workers' organisations, federations and confederations shall not be made subject to conditions of such a nature as to restrict the exercise of the right referred to in the preceding paragraph.

103rd Report, Case No. 514, para. 224.

148.

The question as to whether a need to form federations and confederations is felt or not is a matter to be determined solely by the workers and workers' organisations themselves after their right to form them has been legally recognised.

60th Report, Case No. 191, para. 150.

149.

The normal principle in countries having an established trade union movement is for the government to leave it to the organisations concerned to draw up the rules for their affiliation to federations. These rules normally provide that the consent of either a simple majority or a fixed proportionate majority of the members is required.

Sixth Report, Case No. 50, para. 848.

150.

Legislation which requires a minimum number of trade unions or federations for the establishment of organisations of higher degree and prevents the establishment of federations and confederations bringing together the trade unions or federations of different activities in a specific locality or area is incompatible with Articles 5 and 6 of Convention No. 87.

85th Report, Case No. 335, para. 400.

151.

When only one confederation of workers may exist in a country and the right to form federations is limited necessarily to such federations as the unions scheduled in the law and such new unions as would be registered with the consent of the Minister might form, this is incompatible with Article 5 of Convention No. 87.

83rd Report, Case No. 303, para. 180.

152.

Legislation which permits the formation of only one central trade union organisation is contrary to the principles established in Convention No. 87.

85th Report, Case No. 274, para. 286.

153.

Importance has been attached by the Committee to the right to form federations grouping unions of workers engaged in different occupations and industries. In this connection, the Committee of Experts on the Application of Conventions and Recommendations pointed out in respect of a provision of national law prohibiting organisations of public officials from adhering to federations or confederations of industrial or agricultural organisations, that it seems difficult to reconcile this provision with Article 5 of Convention No. 87. It indicated, in the same observation, that while the legislation permitted organisations of public officials to federate among themselves, and provided for the official recognition of such federations, these provisions did not appear to be compatible with Article 6 of the Convention, which refers to Article 2 of the Convention with respect to the establishment of federations and confederations and adhesion to these

higher organisations. According to these provisions of the Convention, trade union organisations should have the right to establish federations or confederations "of their own choosing without previous authorisation".

108th Report, Case No. 506, paras. 225 and 226.

154.

While the prohibition of a single trade union catering for industrial and agricultural workers is not necessarily contrary to the Convention, a government's refusal to permit agricultural unions to affiliate with a national centre of workers' organisations comprising industrial unions is incompatible with Article 5 of the Convention.

108th Report, Case No. 506, para. 226.

155.

Conditions laid down by law for the organisation of federations, and in particular a condition that founding unions based in different provinces must first ask permission (which may be refused) from the Minister of a country, are incompatible with the generally accepted principles of freedom of association, which include the right of trade unions to form such federations as they see fit.

116th Report, Case No. 558, para. 142.

156.

It seemed to the Committee that a law forbidding close links between the Congress of industrial relations in one country and the agricultural and plantation workers had the effect of depriving any union which might be formed in the agricultural sector of the benefit of the experience and facilities of this Congress, thereby rendering the formation of an agricultural union particularly difficult. The Committee pointed out that in certain cases such assistance could be of great importance for the enjoyment of the right, guaranteed to workers by Article 2 of Convention No. 87, to establish and join organisations of their own choosing without previous authorisation. In this connection, the Committee recalled that, in accordance with Article 8(2) of the Convention, the law of the land shall not be such as to impair, nor shall

E. RIGHT OF WORKERS' AND EMPLOYERS' ORGANISATIONS TO AFFILIATE WITH INTERNATIONAL ORGANISATIONS OF EMPLOYERS AND WORKERS

1. General principles

157.

International trade union solidarity constitutes one of the fundamental objectives of any trade union movement and underlies the principle laid down in Article 5 of Convention No. 87 to the effect that any organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

105th Report, Case No. 503, para. 212.

158.

The Committee has emphasised the importance that it attaches to the fact that no obstacle should be placed in the way of the affiliation of workers' organisations, in full freedom, with any international organisation of workers of their own choosing.

Sixth Report, Case No. 3, para. 1026.

159.

The Committee considered that there might be justification for one complainant's contention that the principle of the right of workers' organisations to affiliate with international organisations of workers includes by implication the right to disaffiliate from an international organisation.

24th Report, Case No. 155, para. 13.

160.

The Committee considered that it would appear difficult to understand how the mere fact of the affiliation of a national trade union to an international organisation could extend the definition of "foreign society" to that national trade union. The Committee drew attention to the importance of national legislation not being applied in such a manner as

to contravene the principle that trade union organisations should be able to affiliate freely with international organisations of workers.

57th Report, Case No. 248, para. 42; 65th Report, Case No. 266, para. 41.

2. Intervention of the public authorities

161.

Legislation which requires the obtaining of government permission for the international affiliation of a trade union is incompatible with the principle of free and voluntary affiliation of trade unions with international organisations.

Sixth Report, Case No. 50, para. 854; 60th Report, Case No. 274, para. 280; 65th Report, Case No. 266, para. 42.

162.

When a national organisation seeks to affiliate with an international organisation of workers the question as to what conditions the national organisation attaches to its application and the question as to whether it agrees or disagrees with the international organisation in its attitude to any political matter are questions which concern only the respective organisations themselves; while disagreement may influence the national organisation in deciding whether to seek, maintain or withdraw from international affiliation, it should not form a basis for government intervention.

28th Report, Case No. 169, para. 303.

3. Consequences of international affiliation

163.

The principle that national organisations of workers should have the right to affiliate with international organisations carries with it the right, for these organisations, to make contact with one another and, in particular, to exchange their trade union publications.

Sixth Report, Case No. 40, para. 529; 12th Report, Case No. 75, para. 288; 14th Report, Case No. 101, para. 72.

164.

A necessary corollary of the right of affiliation with international organisations is the right of national trade union organisations to receive the benefits which may result from such affiliation.

101st Report, Case No. 506, para. 421;
111th Report, Case No. 563, para. 58.

165.

Legislation which provides for the banning of any and all organisations where there is evidence that they are under the influence or direction of any outside source, and also for the banning of any and all organisations where there is evidence that they receive financial assistance or other benefits from any outside source unless such financial assistance or other benefits be approved by and channelled through government is incompatible with the principles set out in Article 5 of the Convention in so far as these provisions apply to the right of trade unions to affiliate with international workers' organisations.

101st Report, Case No. 506, paras. 414 and 423.

4. Relations and contacts between national and international organisations

166.

The right of national workers' organisations to affiliate to international workers' organisations, a right which constitutes an important aspect of freedom of association, normally carries with it the right for representatives of national organisations to be in contact with and to participate in the work of the international organisations to which their organisations are affiliated.

167.

The Committee has stressed this principle, while at the same time recognising that the refusal to grant a passport (or visa) is a question which concerns the sovereignty of a State.

Sixth Report, Case No. 40, para. 522; 12th Report, Case No. 64, para. 96; Case No. 74, para. 180; 51st Report, Case No. 233, para. 91.

168.

The Committee has stressed the same principle in cases concerning the arrest of trade union leaders on account of their taking part in a meeting of an international organisation or on account of their contacts with such an organisation.

12th Report, Case No. 65, para. 119; 78th Report, Cases Nos. 397 and 400, para. 313; 95th Report, Case No. 497, para. 317.

169.

The formalities required before trade unionists can leave a country in order to take part in international meetings should be based on objective criteria, so as not to involve the risk of infringing the right of trade union organisations to send representatives to international trade union congresses.

89th Report, Case No. 437, para. 87.

170.

Participation in the work of international organisations must be based on the principle of the independence of the trade union movement. Full freedom should be given, within the framework of this principle, to representatives of trade unions to take part in the work of the international workers' unions to which the organisations they represent are affiliated.

Sixth Report, Case No. 40, para. 523.

171.

As regards the prohibition against foreign representatives of international organisations taking the floor at trade union meetings, the Committee emphasises the importance which it attaches to safeguarding the right of trade union assembly and the right to national trade union organisations to maintain relations with international occupational organisations.

19th Report, Case No. 133, para. 123.

172.

In a case concerning the expulsion of a representative of an international organisation because the authorities believed that some of the activities inherent to his mission, or undertaken by himself, constituted interference in internal affairs, the Committee considered that the incident could have been avoided through mutual discussion and pointed out the usefulness, in situations of this kind, of seeking an opportunity for agreement through appropriate discussions in which governments as well as the representatives of international trade union organisations may fully clarify their respective positions.

103rd Report, Case No. 520, para. 240.

173.

In all cases governments have the right to take the necessary measures to guarantee public order and national security, which includes ascertaining the purpose of visits to the country by persons against whom there are grounds for suspicion from this point of view. The authorities should check up on each specific case as quickly as possible and should aim - on the basis of objective criteria - at ascertaining whether or not there exist facts which might

have real repercussions on public order and security. It would be desirable, in situations of this kind, to seek an agreement through appropriate discussions in which the authorities as well as the leaders and organisations concerned may clarify their positions.

111th Report, Case No. 563, paras. 62 and 63.

F. PROTECTION AGAINST ANTI-UNION DISCRIMINATION

1. General principles

174.

Where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, the guarantee, in order to be an effective guarantee, should, when necessary, be ensured by measures which include the protection of the worker against anti-union discrimination in his employment.

11th Report, Case No. 59, para. 63.

175.

In accordance with Convention No. 98, a government must take measures, whenever necessary, to ensure that protection of workers is effective, which of course, implies that the authorities must refrain from any act likely to provoke or have as its object anti-union discrimination against workers in respect of their employment.

84th Report, Case No. 415, para. 60.

176.

It would appear to be a generally accepted principle that no person should be prejudiced in his employment by reason of his trade union activities. The Committee considers, therefore, that not merely dismissal but also compulsory retirement or termination of services would be contrary to this principle if the activities in respect of which action was taken against an employee were in fact lawful trade union activities.

Sixth Report, Case No. 47, para. 728.

177.

It would not appear that sufficient protection against facts of anti-union discrimination as set out in Convention No. 98 is accorded by legislation which enables employers in practice - on condition that they pay the compensation

prescribed by law for cases of unjustified dismissal - to get rid of any worker, even if the true reason is his trade union membership or activities.

78th Report, Case No. 364, para. 73; 119th Report, Case No. 611, paras. 104-107.

2. Trade union leaders and representatives

See also: 196.

178.

One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures - and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organisations should have the right to elect their representatives in full freedom.

19th Report, Case No. 97, para. 48; 30th Report, Case No. 174, para. 229; 44th Report, Case No. 200, para. 157; 57th Report, Case No. 231, para. 120.

179.

The Committee pointed out that one way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct. The Committee also considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organisations should have the right to elect their representatives in full freedom.

14th Report, Case No. 105, para. 134;
58th Report, Case No. 234, para. 578;
61st Report, Case No. 256, para. 40;
66th Report, Case No. 271, para. 463;
69th Report, Case No. 309, para. 122;
89th Report, Case No. 407, para. 30.

180.

The principle that a worker or trade union official must not suffer prejudice by reason of his trade union activities does not necessarily imply that the fact that a person holds a trade union office confers on him immunity against dismissal irrespective of the circumstances.

14th Report, Case No. 105, para. 134.

181.

According to the findings of a court, one of the essential reasons for the dismissal of a trade union official was that he performed certain of the trade union activities in his employer's time, using the personnel of his employer for trade union purposes and using his business position to exercise improper pressure on another employee - all this without the consent of his employer. The Committee considered that when trade union activities are carried on in this way it is not possible for the person concerned to invoke the protection of Convention No. 98 or to contend that, in the event of dismissal, his legitimate trade union rights have been infringed.

49th Report, Case No. 213, para. 79.

3. Machinery and procedures for assuring protection

182.

The Committee considered that the existence in the legislation of basic provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice. Thus, for example, as was pointed out by the Committee of Experts on the Application of Conventions and Recommendations in its Conclusions of 1959, it may often be difficult, if not impossible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim. This shows the full importance of Article 3 of Convention No. 98 which provides that machinery appropriate to national conditions shall be established, where necessary to ensure respect for the right to organise.

73rd Report, Case No. 264, para. 75; 111th Report, Case No. 546, para. 77.

183.

The Committee has recalled that the Fact-Finding and Conciliation Commission on Freedom of Association had stressed the importance of providing expeditious, inexpensive and wholly impartial means of redressing grievances caused by acts of anti-union discrimination; it drew attention to the desirability of settling grievances wherever possible by discussion without treating the process of determining grievances as a form of litigation, but, concluded the Commission, in cases where there will be honest differences of opinion or viewpoint, resort should be had to impartial tribunals or individuals representing the final step of the grievance procedure.

93rd Report, Case No. 420, para. 160.

184.

Having regard to the fact that excessively lengthy proceedings can result in a denial of justice, the Committee has drawn attention to the importance which it attaches to expeditious proceedings for the examination of cases concerning dismissals which could result from trade union activities, in the absence of which the offended employee will feel a growing sense of injustice, with consequent harmful effects on industrial relations.

124th Report, Case No. 398, paras. 54 and 60.

4. Miscellaneous

185.

The requirement that a docker's name must be entered on the Bureau Register for permanent employment does not in itself imply interference with the right of association provided that no anti-union discrimination is exercised in the compilation of the Bureau Register. No discrimination in respect of employment should be exercised against a member of a deregistered union.

12th Report, Case No. 21, paras. 576 and 578.

186.

The Committee is not called upon to pronounce upon the question of the breaking of the contract of employment by dismissal except in cases in which the provisions on dismissal imply anti-union discrimination.

27th Report, Case No. 143, para. 175; 103rd Report, Case No. 490, para. 55.

187.

The issue of a circular by the authorities to oblige employers to cause prejudice to native workers who might take part in certain forms of trade union activity - such as strikes, demonstrations, etc. - as well as certain other forms of activity, e.g. absenteeism, not necessarily constituting trade union activity, constitutes an interference with the rights of workers to pursue concerted activities through their trade unions and, in particular, involves a breach of the generally accepted principle that workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

36th Report, Case No. 183, para. 125.

188.

With regard to allegations concerning the dismissal of trade unionists who absent themselves from their work without their employers' permission to attend a workers' education course, the Committee, with due regard to the provisions of Convention No. 98, and, while recognising in general the

desirability of facilities being accorded to workers to attend such courses, considers that their dismissal in such circumstances does not appear in itself to constitute an infringement of freedom of association.

89th Report, Case No. 444, para. 107.

189.

In one case the Committee found it difficult to accept as a coincidence unrelated to trade union activity that heads of department should have decided, immediately after a strike, to convene disciplinary boards which, on the basis of their service records, ordered the dismissal not only of a number of strikers but also of the seven members of their union committee.

95th Report, Case No. 494, para. 301.

190.

The Committee has emphasised the desirability of including in procedures for the protection of public security the safeguards necessary to avoid any infringement of trade union rights. Taking note of the assurances given by one Government, and interpreting them as meaning that an official may not be dismissed solely on account of his affiliation with a trade union of his own choosing without sufficient proof of his disloyal inclinations being furnished, the Committee considered that the complainant had not furnished proof that either the regulations as a whole or the procedure followed with respect to dismissal of officials infringe the exercise of trade union rights.

13th Report, Case No. 62, para. 69.

191.

With regard to the special committees set up under a law with a view to granting or refusing the "certificates of loyalty" required of certain workers in public utility undertakings if they are to be engaged or retained in service, the Committee recalled the desirability of ensuring that restrictions imposed by the special committees in question should in no case give rise to anti-union discrimination.

90th Report, Case No. 309, para. 20.

192.

The Committee, while noting in one case that conditions approaching civil war obtained, considered that specific restrictions for the purpose of eliminating sabotage in public utility undertakings should not in any case be such as to give rise to anti-union discrimination.

24th Report, Case No. 121, para. 69.

G. PROTECTION AGAINST INTERFERENCE BY EMPLOYERS IN THE AFFAIRS OF WORKERS' ORGANISATIONS

193.

With regard to legislation which contained no specific provisions for the protection of workers' organisations from acts of interference by employers and their organisations and, which provided that, any case not provided for by the legislation should be decided inter alia in accordance with the provisions laid down in the Conventions and Recommendations adopted by the International Labour Organisation in so far as they were not contrary to the laws of the country, and in Convention No. 98 by virtue of its ratification, the Committee considered that it would be most appropriate for the government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers' organisations against these acts of interference.

66th Report, Case No. 239, para. 115.

194.

The issue of circulars by a company requesting its employees to state to which trade union they belonged, even though not intended to interfere with the exercise of trade union rights, may not unnaturally be regarded as such an interference.

Fourth Report, Case No. 5, para. 48.

195.

The question of whether a government should exercise statutory powers to institute legal proceedings in cases of alleged interference by an employers' organisation with a workers' organisation is a matter for the government itself to decide, having regard to whether or not proceedings are justified and are likely to be successful in any given case, provided that refusal to act by the government does not amount to a denial of justice or to a failure to ensure the application of a guarantee provided for in an international instrument.

52nd Report, Case No. 239, para. 172.

196.

In endorsing an observation made by the Committee of Experts on the Application of Conventions and Recommendations concerning a law, the Committee pointed out that it would be extremely difficult for a worker who was dismissed by an employer invoking, for example "neglect of duty", to prove that the real motive for his dismissal was to be found in his trade union activities. Further, since lodging an appeal in this case did not suspend the decision taken, the dismissed trade union leader had, by virtue of the law, to resign his trade union post when he was dismissed, the Committee considered, that the law therefore made it possible for managements of undertakings to hinder the activities of a trade union and this ran counter to Article 2 of Convention No. 98 according to which workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members within establishment, functioning or administration.

54th Report, Case No. 179, paras. 32 and 33.

197.

The fact that one of the members of the government is at the same time a leader of a trade union which represents several categories of workers employed by the State, creates a possibility of interference in violation of Article 2 of Convention No. 98.

84th Report, Case No. 415, para. 62.

H. NEGOTIATIONS AND COLLECTIVE AGREEMENTS

1. General principles

198.

The right to bargain collectively in full freedom of all wage earners not covered by the guarantees embodied in the statutory conditions applicable to public officials is a fundamental trade union right.

11th Report, Case No. 51, para. 55; 13th Report, Case No. 62, para. 83; 27th Report, Case No. 154, para. 261; 114th Report, Cases Nos. 503 and 576, para. 102.

199.

Collective agreements constitute the most certain method for the determination on an equitable basis of wages and conditions of employment in private industry.

11th Report, Case No. 51, para. 48.

200.

The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference, would appear to infringe the principle that workers' and employers' organisations should have the right, without such interference, to organise their activities and to formulate their programmes.

44th Report, Case No. 202, para. 137; 65th Report, Case No. 266, para. 65; 67th Report, Case No. 303, para. 291; 75th Report, Case No. 341, para. 78; 85th Report, Cases Nos. 300, 311 and 321, para. 152; 116th Report, Case No. 551, para. 106; Case No. 385, para. 177; 118th Report, Case No. 559, para. 120.

201.

The Committee has pointed out the importance which it attaches to the right of negotiation of representative organisations, whether they are registered or not.

58th Report, Case No. 179, para. 298.

202.

The question as to whether one party adopts an amenable attitude or an uncomprising attitude towards the demands of the other party is a matter for negotiation between the parties within the law of the land.

16th Report, Case No. 107, para. 54; 28th Report, Case No. 135, para. 25; 33rd Report, Case No. 189, para. 30; 75th Report, Case No. 334, para. 19.

203.

The Committee is not called upon to express a view on systems of collective agreements in force in different countries except in so far as such a system may impair the right of trade unions to assume freely the defence of the workers.

23rd Report, Case No. 111, para. 187; 27th Report, Case No. 143, para. 169.

204.

Intervention by a representative of the public authorities in the drafting of collective agreements, unless it consists exclusively of technical aid, is inconsistent with the spirit of Article 4 of Convention No. 98.

105th Report, Case No. 266, paras. 128 and 129.

205.

The use of collective bargaining for the purpose of settling problems of rationalisation in undertakings and improving their efficiency may yield valuable results for both the workers and the undertakings. Nevertheless, if this type of collective bargaining has to follow a special

pattern which amounts to imposing bargaining on the trade organisations on those aspects determined by the labour authority; the period of negotiation not exceeding a specified time; and failing agreement between the parties, the points at issue being submitted to arbitration by the said authority, such a statutory system does not conform to the principle of voluntary negotiation which is the guiding principle of Article 4 of Convention No. 98.

116th Report, Case No. 541, paras. 71 and 72.

2. Civil servants and other workers in the employ of the State

206.

With regard to obligations consequent upon the ratification of Convention No. 98, the Committee has considered that, by providing in its legislation, first, for negotiation machinery and, secondly, for the conclusion of collective agreements in respect of government-employed persons other than those benefiting from statutory terms and conditions, the Government appears to have acted in a manner consistent with the stipulations contained in Article 4 of Convention No. 98. With regard to the persons who do enjoy statutory terms and conditions, that is, persons engaged in the administration and with whom Convention No. 98 does not deal specifically, although it is not to be construed as prejudicing their rights or status in any way, the Committee considered that the Government, by enabling them to present grievances and representations through their organisations with a view to their being taken into consideration by those responsible for laying down or making recommendations concerning the contents of their statutory terms and conditions, adopted the principle most usually accepted in other countries with respect to civil servants of this category, whose situation under the law admits of negotiation but not of the conclusion of collective agreements.

12th Report, Case No. 60, para. 43.

207.

Under law concerning local public enterprise any agreement involving the expenditure of funds not available from the budget or funds of the local public enterprise shall not be binding upon the local public body concerned and no funds shall be disbursed pursuant thereto, until appropriate action has been taken by the assembly of the local public body concerned. In this connection the Committee pointed out that 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 compulsory arbitration tribunals, and it expressed the view that the application of this principle should be effectively ensured in the case of the exercise of budgetary powers by a local public body in relation to collective agreements entered into by or on behalf of that public body.

66th Report, Case No. 179, paras. 361 and 362.

208.

With regard to the administrative staff of a national university, the Committee pointed out that the right to present their claims is generally recognised for workers belonging to similar categories.

104th Report, Case No. 534, para. 65.

209.

With regard to a complaint concerning the right of teachers to engage in collective bargaining, the Committee, in the light of the principles contained in Convention No. 98, drew attention to the desirability of promoting voluntary collective bargaining, according to national conditions, with a view to the regulation of terms and conditions of employment.

118th Report, Case No. 573, para. 194.

210.

Civil aviation technicians working under the jurisdiction of the armed forces cannot be considered, in view of the nature of their activities, as belonging to the armed forces and as such liable to be excluded from the guarantees laid down in Convention No. 98; the rule contained in Article 4 of the Convention concerning collective bargaining should be applied to them.

116th Report, Case No. 598, paras. 375-378.

3. Representation of workers by a trade union

See also: 26, 27, 44.

211.

The Committee has expressed the view that, while the public authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers, whether negotiating at the regional or national level, should be entitled to choose as they wish the organisation which shall represent them in the negotiations.

54th Report, Case No. 179, paras. 156 and 157.

212.

Convention No. 98 calls (in Article 4) upon governments to adopt measures 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. The Collective Agreements Recommendation, 1951 (No. 91), paragraph 2(1), defines a collective agreement as an agreement concluded between an employer, a group of employers or one or more employers' organisations and one or more representative workers' organisations or, "in the absence of such organisations, the representatives of the workers". The Committee observed that the above-mentioned international instruments stress the role of workers' organisations as one of the parties in collective bargaining; they refer to representatives of unorganised workers only when there is no organisation. In these circumstances the Committee considered that direct negotiation between the undertaking and its employees, by-passing representative organisations where these exist, might be detrimental to the principle that negotiation between employers and organisations of workers should be encouraged and promoted.

73rd Report, Case No. 264, paras. 68 and 69.

213.

In a case where the direct offer made by the company to its workers was merely a repetition of the proposals previously made to the trade union, which had rejected them, and where negotiations between the company and the trade

union were subsequently resumed, the Committee therefore considered that the complainants had not demonstrated that there has been a violation of trade union rights.

75th Report, Case No. 334, para. 20.

214.

In a case where the rights to represent all the employees in the sector in question appeared to have been granted to organisations which were representative to only a limited extent at the national level, the Committee considered that, if national legislation establishes machinery for the representation of the occupational interests of a whole category of workers, this representation should normally lie with the organisations which have the largest membership in the category concerned, and the public authorities should refrain from any intervention that might undermine this principle.

118th Report, Cases Nos. 589 and 594, paras. 81 and 82.

215.

The fact that a trade union organisation is debarred from membership of joint committees does not necessarily imply infringement of the trade union rights of that organisation. But for there to be no infringement, two conditions must be met: first, that the reason for which a union is debarred from participation in a joint committee must lie in its non-representative character, determined by objective criteria; second, that in spite of such non-participation, the other rights which it enjoys and the activities it can undertake in other fields must enable it effectively to further and defend the interests of its members within the meaning of Article 10 of Convention No. 87.

93rd Report, Case No. 281, para. 71.

216.

In a case where the Government, in the light of national conditions, had restricted the right to engage in collective bargaining to the two most representative national unions of workers in general, the Committee considered that this should not prevent a union representing the majority of workers of a

certain category from furthering the interests of its members. The Committee recommended that the Government be requested to examine the measures which it might take under national conditions in order to afford this union the possibility of being associated with the collective bargaining process so as to permit it adequately to represent and defend the collective interests of its members.

119th Report, Case No. 590, para. 63.

217.

While it may or may not be legitimate, according to circumstances, for employers to pay off a crew in order to secure less expensive labour, it would seem to be an interference with the collective bargaining rights of employees if this process is carried out and difficulties placed in the way of contact between the employees and their union by means of misleading the authorities of a foreign State so as to cause them to order a repatriation of the employees which, according to the government of that State, would not have been required if the intention of reactivating the ship had been revealed.

30th Report, Case No. 173, para. 58.

4. Voluntary character of collective bargaining and recognition of trade unions by employers

218.

Nothing in Article 4 of the Convention places a duty on the government to enforce collective bargaining by compulsory means, with a given organisation; an intervention which would clearly alter the nature of such bargaining.

13th Report, Case No. 96, para. 137; 75th Report, Case No. 334, para. 19; 76th Report, Case No. 292, para. 256.

219.

A government having given legal recognition to trade unions as competent to regulate employment relations, is not under a duty to make collective bargaining compulsory.

17th Report, Case No. 97, para. 148.

220.

A refusal by an employer to bargain with a particular union has not been regarded by the Committee as an infringement of freedom of association appropriate for consideration by the Committee; it has adopted this attitude on the basis of the principle that collective bargaining must, if it is to be effective, assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining.

31st Report, Case No. 161, para. 33; 102nd Report, Case No. 512, para. 19.

221.

In a case where a union had been legally registered so that it was legally free to conclude collective agreements but where the Government was not bound by any law to enforce

collective bargaining by compulsory means, the Committee took the view that the free exercise of trade union rights had not been infringed.

Sixth Report, Case No. 57, paras. 936 and 937; Seventh Report, Case No. 52, paras. 22 and 23; 24th Report, Case No. 149, paras. 165 and 166; 45th Report, Case No. 204, para. 57; 58th Report, Case No. 262, para. 661.

222.

The Committee has emphasised the importance which it attaches to the principle that employers, including governmental authorities in the capacity of employers of wage earners, should recognise for collective bargaining purposes the organisations representative of the wage earners employed by them.

17th Report, Case No. 73, para. 76; 30th Report, Case No. 172, para. 185; 84th Report, Case No. 415, para. 54; 116th Report, Case No. 598, para. 378.

223.

The Committee has attached considerable importance to the principle whereby employers should recognise organisations that are representative of workers in a particular industry for the purposes of collective bargaining.

119th Report, Case No. 605, para. 75.

224.

If there is a change in the relative strength of unions competing for a preferential right or the power to represent workers exclusively for collective bargaining purposes, then it is desirable that there should be the possibility of a review of the factual bases on which that right or power was granted. In the absence of such a possibility, a majority of the workers concerned might be represented by a union which, for an unduly long period, could be prevented - either in fact or in law - from organising its administration and activities with a view to fully furthering and defending the interests of its members.

109th Report, Case No. 533, para. 101.

225.

When two years have elapsed since the signature of a five-year collective agreement, if a union other than that which concluded the agreement has become the majority union and requests the cancellation of this agreement, the authorities, notwithstanding the agreement, should make appropriate representations to the employer regarding the recognition of this union.

109th Report, Case No. 533, para. 102.

5. Collective agreements and legislation

226.

The Committee, while recognising that it is not called upon to consider the question of access to particular employments except in so far as the determination of such access may affect the exercise of trade union rights, has considered, that it is a generally accepted principle in the majority of countries that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

15th Report, Case No. 102, para. 164.

227.

The Committee has drawn attention, where job reservations have been determined by legislation, to the fact that such provisions may tend to prevent the negotiation by collective agreement of better terms and conditions, mainly concerning access to particular employments, and thereby to infringe the rights of the workers concerned to bargain collectively and to improve their working conditions.

76th Report, Case No. 291, para. 194.

228.

A legal provision which could be applied so as to supersede the conditions laid down in collective agreements or to prevent the workers from negotiating such conditions as they wish in future collective agreements, would infringe the rights of the persons concerned to bargain collectively through their trade unions.

15th Report, Case No. 102, para. 185.

229.

In one case in which it was alleged that Article 4 of Convention No. 98 had been infringed, because on one occasion when lengthy negotiations had reached a deadlock the Government gave effect to the claims of the union by an

enactment, the Committee pointed out that such an argument would, if carried to its logical conclusion, mean that in nearly every country where the workers were not sufficiently strongly organised to obtain a minimum wage, such a standard being prescribed by law, Article 4 of Convention No. 98 would be infringed. Such an argument would clearly be untenable. If the Government adopted a systematic policy of giving by law what the unions cannot obtain by negotiation, the situation might call for reappraisal.

89th Report, Case No. 449, para. 72.

230.

According to one legal system a certain number of matters may be subject to collective bargaining on questions of labour in local public enterprise. In such cases concerning labour relations in local public enterprise where an agreement has been concluded the terms of which are in conflict with the by-law of the local public body concerned, the chief of this body shall submit a Bill on the necessary revision or abrogation of the by-law, in order that the said agreement may cease to conflict with the by-law, to the assembly of the local public body concerned for decision by it; unless there is revision or abrogation of the by-law in question, the agreement shall not take effect to the extent that the provision is in conflict with it. The Committee observed that the whole principle of settling matters by collective agreement would be ineffective unless it is recognised that there is an obligation to modify by-laws so as to secure compliance with collective agreements, and so the question of modification ceases to be within the discretion of the local public body.

66th Report, Case No. 179, paras. 359 and 360.

231.

Legislation amending collective agreements which had already been in force for some time and which prohibits collective agreements concerning the manning of ships from being concluded in the future, was not in conformity with Article 4 of Convention No. 98.

106th Report, Case No. 541, paras. 12-16 and 19.

232.

Legislation establishing that the Ministry of Labour has powers to regulate wages, working hours, leave and conditions of work, that these regulations must be observed in collective agreements, and that such important aspects of conditions of work are thus excluded from the field of collective bargaining is not in harmony with Article 4 of Convention No. 98.

116th Report, Case No. 551, para. 109.

6. Approval of collective agreements by the public authorities - collective agreements and state of the economy

233.

The requirement of previous approval by a government authority to make an agreement valid might discourage the use of voluntary collective bargaining between employers and workers for the settlement of conditions of work. Even though a refusal by the authorities to give its approval may sometimes be the subject of an appeal in the courts, the system of official approval in itself is contrary to the whole system of voluntary negotiation.

25th Report, Case No. 151, para. 312; 30th Report, Case No. 143, paras. 123 and 124; 41st Report, Case No. 143, para. 80; 65th Report, Case No. 266, para. 73; 66th Report, Case No. 294, para. 495; 75th Report, Case No. 341, para. 78; 78th Report, Cases Nos. 397 and 400, para. 327; 118th Report, Case No. 559, para. 121.

234.

Where intervention by the public authorities is essentially for the purpose of ensuring that the negotiating parties subordinate their interests to the national economic policy pursued by the government, irrespective of whether they agree with that policy or not, this is not compatible with the generally accepted principles that workers' and employers' organisations should enjoy the right freely to organise their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair or be so applied as to impair the enjoyment of such right.

65th Report, Case No. 266, para. 70.

235.

The Committee has taken the view that legislation which permits the refusal to allow a collective agreement to be filed on grounds only of errors of pure form is not in conflict with the principle of voluntary negotiation laid down by Convention No. 98. On the other hand, if this provision implies that a collective agreement may be refused on grounds

such as incompatibility with the general policy of the government, it amounts to a requirement that prior approval be obtained before a collective agreement can come into force, and infringes the principles of voluntary negotiation laid down by the aforementioned Convention.

85th Report, Case No. 341, paras. 185 and 186.

236.

While the demand for a readjustment of wages to the cost of living may be mainly a question of an economic character and not connected with freedom of association, the same is not true with regard to the question as to the method of fixing wages by collective agreements. The development of procedures for the voluntary negotiation of collective agreements in fact constitutes an important aspect of freedom of association. However, it would be difficult to lay down an absolute rule concerning this matter because, under certain circumstances, governments might feel that the economic position of their countries called at certain times for stabilisation measures during the application of which it would not be possible for wage rates to be fixed freely through the medium of collective bargaining.

Sixth Report, Case No. 55, para. 923; 106th Report, Case No. 541, para. 16; 110th Report, Case No. 561, para. 225; 116th Report, Case No. 551, para. 107.

237.

If, as part of its stabilisation policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards.

110th Report, Case No. 503, para. 46.

238.

In the case of certain collective agreements the terms of which appear to conflict with considerations of general interest, it might be possible to envisage a procedure

whereby the attention of the parties could be drawn to those considerations to enable them to examine the matter further, it being understood that the final decision thereon should rest with the parties.

85th Report, Cases Nos. 294, 383, 397 and 400, para. 378.

239.

Objections by the Committee to the requirement that prior approval of collective agreements be obtained from the government do not signify that ways could not be found of persuading the parties to collective bargaining to have regard voluntarily in their negotiations to considerations relating to the economic or social policy of the government and the safeguarding of the general interest. But to achieve this it is necessary first of all that the objectives to be recognised as being in the general interest should have been widely discussed by all parties on a national scale through a consultative body such as the National Social Policy Advisory Board, in accordance with the principle laid down by the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). It might also be possible to envisage a procedure whereby the attention of the parties could be drawn, in certain cases, to the considerations of general interest which might call for further examination of the terms of agreement on their part. However, in this connection, persuasion is always to be preferred to constraint. Thus, instead of making the validity of collective agreements subject to governmental approval, it might be provided that every collective agreement filed with the Ministry of Labour would normally come into force a reasonable length of time after being filed; if the public authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognised as being desirable in the general interest, the case could be submitted for advice and recommendation to an appropriate consultative body, it being understood, however, that the final decision in the matter rested with the parties to the agreement.

85th Report, Case No. 341, para. 187; 118th Report, Case No. 559, para. 122.

I. THE RIGHT TO STRIKE

1. General principles

240.

The Committee has taken the view that allegations relating to the right to strike are not outside its competence in so far as they concern the exercise of trade union rights.

30th Report, Case No. 177, para. 76; 41st Report, Case No. 143, para. 91; 58th Report, Case No. 221, paras. 109 and 111; 60th Report, Case No. 191, para. 155; 67th Report, Case No. 299, para. 98; 71st Report, Case No. 273, paras. 67 and 73; 79th Report, Case No. 380, para. 68; 83rd Report, Case No. 303, para. 217; 104th Report, Case No. 493, para. 73; 105th Report, Case No. 524, para. 245; 111th Report, Case No. 546, para. 79; 116th Report, Case No. 385, para. 167; 118th Report, Cases Nos. 589 and 594, para. 59; 120th Report, Case No. 604, para. 150.

241.

The right to strike by workers and their organisations is generally recognised as a legitimate means of defending their occupational interests.

Fourth Report, Case No. 5, para. 27; 15th Report, Case No. 102, para. 180; 25th Report, Case No. 152, para. 217; 30th Report, Case No. 172, para. 202; 45th Report, Case No. 212, para. 80; 60th Report, Case No. 274, para. 266; 66th Report, Case No. 294, para. 481; 90th Report, Case No. 490, para. 39; 106th Report, Case No. 523, para. 32; 110th Report, Case No. 519, para. 79; 113th Report, Case No. 266, para. 158; 116th Report, Case No. 385, para. 167; 118th Report, Cases Nos. 589 and 594, para. 59.

242.

The right to strike is one of the essential means through which workers and their organisations may promote and defend their occupational interest.

Second Report, Case No. 28, para. 68; 30th Report, Case No. 177, para. 76; 41st Report, Case No. 143, para. 91; 58th Report, Case No. 221, para. 109; 78th Report, Case No. 364, para. 84; 82nd Report, Case No. 343, para. 26; 87th Report, Case No. 363, para. 89.

243.

The Committee has emphasised the importance which it attaches, where strikes are prohibited or subject to restrictions, to ensuring adequate guarantees to safeguard to the full the interests of the workers thus deprived of an essential means of defending their occupational interests, and has pointed out that the restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.

60th Report, Case No. 274, para. 266; 65th Report, Case No. 266, para. 77; 66th Report, Case No. 294, para. 481; 67th Report, Case No. 303, para. 307; 69th Report, Case No. 307, para. 89; 95th Report, Case No. 461, para. 246.

244.

In 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 the recommendation in question refers not to the absolute prohibition of the right to strike as such but to the restriction of that right in essential services or in the public service, in relation to which the Committee has stated that adequate guarantees should be provided to safeguard the workers' interests.

76th Report, Case No. 294, paras. 284 and 285; 85th Report, Case No. 411, para. 224; 99th Report, Case No. 490, para. 39; 101st Report, Case No. 527, para. 531.

245.

Where the right to strike is accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it is accorded.

15th Report, Case No. 102, para. 154; 36th Report, Case No. 183, para. 131.

246.

While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organisations, it has regarded it as such only in so far as it is utilised as a means of defending their economic interests.

27th Report, Case No. 156, para. 287.

247.

The Committee has taken the view that the prohibition of strikes by reason of their non-occupational character or where they have been designed to coerce a government with respect to a political matter or where the strike was directed against the government's policy and was not in furtherance of a trade dispute does not constitute an infringement of freedom of association.

Second Report, Case No. 23, para. 49; Sixth Report, Case No. 40, para. 547; 11th Report, Case No. 86, para. 21; 25th Report, Case No. 136, para. 177; 28th Report, Case No. 170, para. 143; 36th Report, Case No. 178, para. 56; 46th Report, Case No. 208, para. 15; 49th Report, Case No. 299, para. 92; Case No. 192, para. 168; 58th Report, Case No. 221, para. 109; 66th Report, Case No. 298, para. 542; 67th Report, Case No. 303, para. 315; 70th Report Case No. 298, para. 360; 74th Report, Case No. 363, para. 233; Case No. 367, para. 145; 76th Report, Case No. 29, para. 156; 87th Report, Case No. 363, para. 89; 93rd Report, Cases Nos. 409 and 456, para. 225; 96th Report, Case No. 491, para. 62; 116th Report, Case No. 385, para. 167.

248.

The Committee has expressed the hope that governments, desiring to see labour relations develop in an atmosphere

of mutual confidence, will have recourse, when dealing with situations resulting from strikes and lockouts, to measures provided for under common law rather than to emergency measures, which involve a danger, by reason of their very nature, of certain restrictions being placed on fundamental rights.

Seventh Report, Case No. 56, para. 69; 25th Report, Case No. 152, para. 217; 27th Report, Case No. 143, para. 186; 30th Report, Case No. 172, para. 204; 36th Report, Case No. 192, para. 104; 74th Report, Case No. 294, para. 183.

249.

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.

58th Report, Case No. 221, para. 109.

250.

In one case, while the complainants alleged, among the motives for the strike, police interference in trade union activity, poor wages and bad conditions, the Government itself stated that the proclaimed reason for the strike was to give a warning to the Government for better wages for African workers. The strike appeared to have been a general strike called by the central African workers' organisation and therefore the Committee considered the Government might have been partially involved in its role as an employer, in the claims made for better wages. This seemed to the Committee, in accordance with the view it expressed in circumstances having certain points of analogy with the present case, to make it seem doubtful whether the allegations could be dismissed at the outset on the ground that the strike was not in furtherance of a trade dispute.

70th Report, Case No. 298, para. 361.

251.

The solution of a dispute over a point of law following 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.

119th Report, Case No. 611, paras. 97 and 98.

252.

The Committee has drawn attention to the danger of abuse entailed by a régime under which, while the right to strike is recognised by the Constitution of the Community, it is left to the governmental authorities alone to determine in their discretion the limitations which shall be placed upon its exercise.

46th Report, Case No. 208, para. 17.

253.

The prohibition against the calling of strikes by federations and confederations is not compatible with Article 6 of the Convention, which applies Article 3 of the Convention with respect to the functioning of federations and confederations. According to Article 3, trade union organisations shall have the right "to organise their administration and activities and to formulate their programmes", while the public authorities shall refrain "from any interference which would restrict this right or impede the lawful exercise thereof".

92nd Report, Case No. 454, para. 193.

2. Prerequisites and temporary restrictions

254.

It is necessary for the conditions that have to be fulfilled, under the law, in order to render a strike lawful, to be reasonable, and, in any event, not such as to place a substantial limitation in the means of action open to trade union organisations.

37th Report, Case No. 170, para. 41; 41st Report, Case No. 172, para. 157; 46th Report, Case No. 208, para. 14; 58th Report, Case No. 192, para. 445; 92nd Report, Case No. 454, para. 185.

255.

The Committee has emphasised that, although a strike may be temporarily restricted by law, until existing facilities for negotiation, conciliation and arbitration can be brought to bear, such limitation should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.

22nd Report, Case No. 148, para. 100; 30th Report, Case No. 177, para. 76; Case No. 181, para. 94; 45th Report, Case No. 212, para. 80; 58th Report, Case No. 221, para. 111; 60th Report, Case No. 191, para. 155; Case No. 274, para. 266; 92nd Report, Case No. 454, para. 186; 99th Report, Case No. 506, para. 89; 118th Report, Case No. 559, para. 139.

256.

The Committee has recognised in a number of cases that prior notification to the administrative authority and provision for compulsory conciliation and arbitration in industrial disputes before calling a strike are provided for in the laws or regulations of a substantial number of

countries and that reasonable provisions of this type cannot be regarded as an infringement of freedom of association.

Fourth Report, Case No. 5, para. 27; Sixth Report, Case No. 47, para. 724; Case No. 50, para. 864; 25th Report, Case No. 151, para. 309; 37th Report, Case No. 170, para. 41; 41st Report, Case No. 172, para. 157; 46th Report, Case No. 208, para. 15; 58th Report, Case No. 192, para. 445; 69th Report, Case No. 307, para. 96; 74th Report, Case No. 363, para. 233; 79th Report, Case No. 405, para. 83; 82nd Report, Case No. 343, para. 26; Case No. 454, para. 185.

257.

With regard to the majority vote required by one law for the declaration of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which may entail a penalty by the administrative authorities going as far as dissolution of the union, the Committee recalled the conclusions of the Committee of Experts on the Application of Conventions and Recommendations to the effect that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of a nature to restrict the rights of such organisations, contrary to Article 3 of the Convention.

79th Report, Case No. 408, para. 182; 82nd Report, Case No. 454, para. 188.

258.

The Committee has accepted as a temporary restriction on strikes provisions prohibiting strike action in breach of collective agreements.

Fourth Report, Case No. 5, para. 27; 15th Report, Case No. 102, para. 180; 25th Report, Case No. 152, para. 217.

3. Restrictions in essential services and in the civil service

See also: 244, 270, 279, 280.

259.

The Committee considers that, 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 them for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.

12th Report, Case No. 60, para. 53; 17th Report, Case No. 73, para. 72; 24th Report, Case No. 146, para. 278; 25th Report, Case No. 136, para. 176; Case No. 151, para. 308; 56th Report, Case No. 233, para. 60.

260.

The Committee has pointed out, that it would not appear to be appropriate for all publicly 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 because their interruption may cause public hardship and those which are not essential according to this criterion.

54th Report, Case No. 179, para. 55; 60th Report, Case No. 274, para. 271; 108th Report, Case No. 524, para. 28; 118th Report, Cases Nos. 589 and 594, para. 90.

261.

With regard to legislation which leaves the government a good deal of latitude in deciding which activities are considered to be public services - which, in certain cases, might not coincide with those that come under the heading of an "essential service" (for example, banks, petroleum companies) the Committee has taken the view that its principle regarding the prohibition of strikes in "public services" might be set aside if a strike were declared

illegal in one or more firms which were not performing an "essential service" in the strict sense of the term.

74th Report, Case No. 363, para. 230.

262.

As regards legislation which establishes a list of government services in which strikes are prohibited and which also includes activities that do not appear to be essential in character such, for example, in normal circumstances, as general dock work, aircraft repairs and all transport services, and where the Government can extend this list, the Committee has suggested to the Government concerned the possibility of considering an amendment to the legislation so that, if it should be decided to prohibit strikes in certain cases, the latter should be confined to services which were essential in the strict sense of the word.

118th Report, Cases Nos. 589 and 594, paras. 90-92.

263.

The Committee has considered that civil servants enjoying statutory terms and conditions are, in the majority of countries, denied the right to strike as a normal condition in the legislation governing their employment.

12th Report, Case No. 60, para. 52.

264.

Recognition of the principle of freedom of association in the case of public officials does not necessarily imply the right to strike.

Sixth Report, Case No. 55, para. 919.

265.

The Committee has stressed the importance which it attaches, whenever strikes in essential services or in the civil service are forbidden or subject to restriction, to ensuring adequate guarantees to safeguard to the full the interests of the workers thus deprived of an essential

means of defending their occupational interests; it has also pointed out that the restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration procedures, in which the parties can take part at every stage and in which the awards are binding in all cases on both parties; these awards, once they have been made, should be fully and promptly implemented.

30th Report, Case No. 181, para. 94; 54th Report, Case No. 179, para. 60; 69th Report, Case No. 285, para. 63; 74th Report, Case No. 363, para. 220; 76th Report, Case No. 294, para. 286; 78th Report, Case No. 364, para. 79; 85th Report, Case No. 411, para. 224; 98th Report, Case No. 503, para. 259; 99th Report, Case No. 490, para. 39; 101st Report, Case No. 527, para. 531; 106th Report, Case No. 523, para. 33; 110th Report, Case No. 519, para. 79; Case No. 561, para. 224; 112th Report, Case No. 385, para. 75; 118th Report, Cases Nos. 589 and 594, para. 60; Case No. 573, para. 194; 120th Report, Case No. 604, para. 150.

266.

As regards the nature of appropriate guarantees, in the case of restriction of the right to strike in essential services and the civil service the Committee came to the conclusion that allegations relating to the denial of the right to strike did not call for further examination after having noted that this denial was accompanied by certain guarantees to safeguard the interests of the workers - a corresponding denial of the right of lockout, provision of joint conciliation procedure and, where and only where, conciliation fails, the provision of joint arbitration machinery. As regards the nature of the system in question, the Committee pointed out that restrictions on the right to 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. Bearing in mind that, in conformity with a law the Executive Power was responsible for the final settlement of disputes in state undertakings, the Committee considered that the above conditions did not all exist.

30th Report, Case No. 172, paras. 178-180;
58th Report, Case No. 192, paras. 447 and 448;
71st Report, Case No. 273, paras. 70-72.

267.

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 where strikes by workers in essential services are prohibited such prohibition should be accompanied by the provision of reconciliation procedure and of impartial arbitration machinery, the awards of which are binding on both sides.

54th Report, Case No. 179, para. 60.

268.

In mediation and arbitration proceedings the essential point is 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 operation 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.

54th Report, Case No. 179, para. 61.

4. Restrictions designed to assure the safety of the undertaking

269.

Restrictions on the right to strike in certain sectors to the extent necessary to comply with statutory safety requirements are normal restrictions.

12th Report, Case No. 60, para. 81; 82nd Report, Case No. 343, para. 45.

270.

In accordance with one law after having exhausted the conciliation procedure and given the statutory notice of intention to strike, the postal or other workers covered by the Labour Code, who are not covered by compulsory arbitration provisions, are bound to ensure that the services "are maintained by a sufficient number of workers, so that the essential requirements of the public can be met". The Committee considered that this provision was in such general terms, that, if it should be interpreted restrictively, it might be construed as implying that any reduction at all in the services affected means that the essential requirements of the public were not met. Where legislation does permit workers in an essential service or industry to call a strike - and, therefore, does not oblige their disputes to be submitted to arbitration - the law does not normally go further than to require the strikers to maintain in work the minimum number of workers necessary to protect installations and machinery and comply with statutory safety measures. The Committee had regard to this fact when it accepted as normal restrictions on the right to strike in the coal-mining industry which, without limiting the right to cease production, refused the right to strike to persons required to protect installations and comply with statutory safety requirements, and when it noted that, in respect of the public sector, a government was entitled, subject to the supervision of the administrative judge, to attach certain restrictions to the right to strike, which was lawful in principle, in the case of supervisory personnel and personnel responsible for the maintenance of security.

69th Report, Case No. 307, paras. 97 and 99.

5. Case of strike prohibition in all activities

See also: 244.

271.

Where legislation has directly or indirectly placed an absolute prohibition on strikes the Committee has endorsed the opinion of the Committee of Experts on the Application of Conventions and Recommendations to the effect that such a prohibition may constitute an important restriction of the potential activities of trade unions, which would not be in conformity with the generally recognised principles of freedom of association.

78th Report, Case No. 364, para. 80, Cases Nos. 397 and 400, para. 327; 99th Report, Case No. 490, para. 40; 118th Report, Case No. 559, para. 141.

272.

By virtue of one law, if by the fortieth day of the strike the parties by mutual consent, or the workers alone, have not requested the compulsory arbitration board to be set up, the Ministry of Labour may order the case to be submitted to such a board and may in this way terminate the strike within the following three days. This provision appears to be applicable even where the workers or their unions consider the continuation of the strike useful to the defence of their occupational interests, and not only in cases where essential services or the civil service are affected but in all kinds of strikes. Consequently the application of the decree would appear to entail the risk of restricting potential trade union activities even in cases where the services suspended by the strike are not essential and are not part of the civil service.

99th Report, Case No. 490, para. 41.

273.

According to one law, provision was made for conciliation and arbitration in all activities and not only in essential services. In fact, according to the law, if conciliation failed, the matter was treated as a collective dispute and in such circumstances was referred to a labour tribunal. The Committee took the view that such a provision, which had the effect of preventing strike action after the tribunal had given its judgment, did not appear to offer the

guarantees necessary for it not to limit seriously the possibilities of action of organisations in defending and promoting the interests of their members.

112th Report, Case No. 385, para. 76.

6. War, state of national emergency and requisitioning measures

274.

Under the wartime legislation of a country engaged in hostilities it may be necessary for trade unions, like other collectivities or individuals, to accept the placing of greater restrictions on their freedom of action than is normally the case under peacetime legislation.

17th Report, Case No. 73, para. 72; 25th Report, Case No. 136, para. 177.

275.

The Committee has taken the view that it would be desirable that wartime legislation should, as soon as practicable after the conclusion of hostilities, be replaced by legislation which allows a greater measure of freedom to trade unions.

17th Report, Case No. 73, para. 72.

276.

Since a general prohibition of strikes is an important restriction of one of the essential means by which the workers and their organisations can promote and defend their occupational interests, such a prohibition could be open to criticism unless it had been imposed exclusively as a transitory measure in a situation of acute national emergency.

78th Report, Case No. 364, para. 84.

277.

The Committee has drawn attention to the possibility of abuse involved in the mobilisation or requisitioning of workers in industrial disputes and has emphasised the undesirability of recourse to such measures except for

the purpose of maintaining essential services in circumstances of the utmost gravity.

30th Report, Case No. 172, paras. 207 and 208; 36th Report, Case No. 192, paras. 98-100; 41st Report, Case No. 199, paras. 59 and 60; 46th Report, Case No. 208, para. 18; 56th Report, Case No. 233, para. 60; 71st Report, Case No. 273, para. 74; 75th Report, Case No. 353, para. 119; 86th Report, Case No. 438, para. 80; 93rd Report, Cases Nos. 470 and 481, para. 272; 110th Report, Case No. 561, para. 219.

278.

The seizure of railroads does not constitute an arbitrary measure intended to restrict the trade union rights of the railway workers if it is an essentially temporary measure dictated by considerations of public interest, taken in accordance with the law in order to deal with a national emergency situation and after the exhaustion of all other methods of settlement of the dispute provided by law.

Second Report, Case No. 33, para. 113.

279.

Although it is recognised that a stoppage in services or undertakings such as transport companies, railways, telecommunications or electricity might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services is by definition such as to engender a state of acute national emergency. The Committee therefore considered that the measures taken to mobilise workers at the time of disputes in services of this kind were such as to restrict the workers' right to strike as a means of defending their occupational and economic interests.

93rd Report, Cases Nos. 470 and 481, paras. 274 and 275.

280.

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 maintenance, in the interests of the community and of public order, and, to this end, may consider it expedient to call

in persons from the armed forces or other sources 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.

13th Report, Case No. 82, para. 112; 30th Report, Case No. 177, para. 83; 71st Report, Case No. 273, para. 73.

281.

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 working of services or industries whose suspension would lead to an acute crisis. The utilisation by the government of labour drawn from outside the trade, with a view to replacing the striking workers, entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights.

67th Report, Case No. 299, para. 98; 71st Report, Case No. 273, para. 73.

7. Police intervention

282.

The Committee has recommended the dismissal of allegations of intervention by security forces 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; at the same time, the Committee implied in those cases that it would have regarded the use of police for strike-breaking purposes as an infringement of a trade union right.

25th Report, Case No. 152, para. 223; 28th Report, Cases Nos. 141, 153 and 154, para. 211; 30th Report, Case No. 177, para. 83; 51st Report, Case No. 208, para. 13; 53rd Report, Case No. 245, para. 47; 108th Report, Case No. 493, para. 106; 111th Report, Case No. 546, para. 79.

8. Pickets

283.

Pickets acting in accordance with the law should not be subject to interference by the public authorities.

25th Report, Case No. 136, para. 170; 86th Report, Case No. 430, para. 48; 92nd Report, Case No. 455, para. 225; 95th Report, Case No. 448, para. 152; Case No. 454, para. 224; 111th Report, Case No. 546, para. 79.

284.

The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued to work.

17th Report, Case No. 73, paras. 62-65; 111th Report, Case No. 546, para. 79.

9. Penal sanctions

285.

The general application of public security legislation to all disputes might involve an infringement of the exercise of trade union rights.

Fourth Report, Case No. 5, para. 26.

286.

In one case where national legislation did not merely prohibit strikes for public officials and make strikers liable to administrative penalties but made strikes a criminal offence with severe penalties involving imprisonment, the Committee recommended the modification of the relevant provisions.

26th Report, Cases Nos. 134 and 141, paras. 77 and 78.

287.

The restrictive nature of legislation governing strikes and the possible consequence of the procedure to be followed before a strike may be declared appeared to make it possible for strikers to be liable in all cases to penal sanctions. This, in the opinion of the Committee, would imply a violation of Convention No. 87 according to 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 the Convention and especially the right of workers' organisations to organise their administration and activities and to formulate their programmes.

85th Report, Case No. 411, para. 229.

288.

Assuming that a penalty or similar penalties apply or may be applied to any strike declared solely in order to promote or defend the workers' occupational interests, such a situation would be contrary to the generally recognised principle concerning the right to strike.

116th Report, Case No. 385, para. 168.

10. Miscellaneous

289.

In one case where the crew of a steamship had performed the work of dockers who were on strike, and where neither the Government nor the employers had intervened in the strike, the Committee considered that it had not been established that the trade union rights of the dockers had been affected.

59th Report, Case No. 267, paras. 14-16.

290.

In a situation where the grant of compensation to the workers dismissed as a result of the strikes was refused, the Committee considered that the measures referred to were general measures that had been taken under the domestic legislation on employment contracts, which did not come within its competence, and were not acts of discrimination against trade unions.

72nd Report, Case No. 294, para. 120.

291.

In one case where the Government had consulted the workers with a view to determining whether they wished the continuance or the calling off of a strike, and where the organisation of the ballot had been entrusted to a permanent, independent body, the workers enjoying the safeguard of a secret ballot, the Committee emphasised the desirability of consulting representative organisations 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.

73rd Report, Case No. 264, paras. 62 and 63.

292.

The boycott is a very special form of action which in some cases may involve a trade union whose members continue their work and are not directly involved in the dispute with the employer against whom the boycott is imposed. In such circumstances the prohibition of boycotts by law would not

J. PARTICIPATION OF WORKERS AND EMPLOYERS ON VARIOUS BODIES

See also: 215, 216, 239.

293.

When sponsoring joint committees dealing with matters affecting the interests of workers, governments should make appropriate provision for the representation of different sections of the trade union movement having a substantial interest in the questions at issue.

Seventh Report, Case No. 52, para. 29.

294.

The extent to which co-operation between trade unions and governments effectively ensures the participation of the trade unions in the determination of wages and conditions of employment and the extent to which the inclusion in such collective agreements of provisions relating to output is consistent with the fulfilment by the trade unions of their responsibility for protecting the interests of the workers depends on the degree of freedom enjoyed by the trade unions in other respects.

23rd Report, Case No. 111, para. 194.

295.

The Committee considered that it was not called upon to express an opinion as to the right of a particular organisation to be invited to take part in consultative bodies unless its exclusion constituted a clear case of discrimination affecting the principle of freedom of association. This was a matter to be determined by the Committee in the light of the facts of each given case.

53rd Report, Case No. 244, para. 35; 67th Report, Case No. 241, para. 44; 69th Report, Case No. 280, para. 21; 77th Report, Case No. 368, para. 16.

296.

The Committee has accepted, conditionally, that it is not contrary to the principles of freedom of association, that a minority organisation may not, under the law, be entitled to be represented in consultative bodies.

69th Report, Case No. 280, paras. 11-26;
77th Report, Case No. 368, paras. 15-20.

297.

The determination of the broad lines of educational policy is not a matter for collective bargaining between the competent authorities and teachers' organisations, although it may be normal to consult these organisations on such matters.

54th Report, Case No. 179, para. 157.

298.

In order to prevent any abuse or criticism, and to ensure impartiality it would be desirable that the representatives of employers and workers on the enlistment committees are truly representative, and accepted by them as such, and consequently for them to be appointed after consultation with the employers and workers concerned or their organisations.

61st Report, Case No. 256, para. 36; 69th Report, Case No. 300, para. 129.

299.

Having regard to the fact that Convention No. 26 on minimum wage-fixing machinery, 1928, provides for the association of employers and workers in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by national laws and regulations, the Committee recommended that, in the event of neither the titular nor the deputy workers' or employers' representative on a wages council discharging his functions, the member appointed by the authorities should normally be a person belonging to the industry or occupation concerned.

73rd Report, Case No. 264, para. 57.

300.

In determining whether an organisation is representative for the purpose of participation in the membership of arbitration tribunals, it is important that the State should not intervene other than to give formal recognition to an existing situation, and it is indispensable that any decision should be based on objective criteria laid down in advance by an independent body, and founded in their turn on grounds which allow for no possibility of abuse.

85th Report, Case No. 341, para. 195.

301.

In one case, the Government had amended the dock labour standards without prior consultation with the trade union concerned on the nature of the new regulations. This action provoked a strike and this led to intervention in the affairs of the union by the Government. The Committee considered that in this case consultation with the trade union organisation concerned during the preparation of the new dock labour standards might perhaps have prevented the developments out of which the case in question had arisen. By engaging in such consultation the Government would have been acting in accordance with the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which states that measures appropriate to national conditions should be taken to promote effective consultation and co-operation between public authorities and employers' and workers' organisations. Such consultation and co-operation should aim at joint consideration of matters of mutual concern with a view to arriving to the fullest possible extent at agreed solutions. It should also aim at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner in respect of such matters as the preparation and implementation of laws and regulations affecting their interests.

105th Report, Case No. 503, paras. 210 and 211.

302.

The establishment of a tripartite group to examine the question of wages and the anti-inflationary measures that should be taken was in accordance with the provision in Recommendation No. 113 to the effect that consultation and co-operation should be promoted between public authorities and employers' and workers' organisations with the general

objective of achieving mutual understanding and good relations between them with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living and, in particular, that the authorities should seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner in respect of such matters as the preparation and implementation of laws and regulations affecting their interests.

110th Report, Case No. 561, para. 224.

303.

In one case where the Government proposed to appoint a special commission to fix the minimum wages of all employees in the public sector, the Committee called attention to certain principles contained in Recommendation No. 113.

118th Report, Cases Nos. 589 and 594, para. 65.

304.

In view of the implications for the standard of living of the workers of the fixing of wages by the government, by-passing the collective-bargaining process, and of the government's wage policy in general, the Committee pointed out the importance it attaches to the promotion of effective consultation and co-operation between public authorities and workers' organisations in this respect, in accordance with the principles laid down in Recommendation No. 113, for the purpose of considering jointly matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions.

114th Report, Cases Nos. 503 and 576, para. 101.

K. TRADE UNION RIGHTS AND CIVIL LIBERTIES

1. General principles

305. A genuinely free and independent trade union movement can develop only under a régime which guarantees fundamental human rights.

Sixth Report, Case No. 2, para. 1012; Seventh Report, Case No. 56, para. 68.

306. The Committee has considered it appropriate to emphasise the importance to be attached to the fundamental principles enunciated in the Universal Declaration of Human Rights, as violation of these principles may affect the free exercise of trade union rights.

56th Report, Case No. 235, para. 202; 62nd Report, Case No. 192, para. 71.

307. The Committee, while recalling that under the terms of Article 8 of Convention No. 87 workers and employers and their respective organisations like other persons or organised collectivities shall respect the law of the land, provided that the law of the land shall not impair the guarantees provided for in the Convention, has nevertheless expressed the opinion that a free trade union movement can develop only under a régime which guarantees fundamental rights including the right of trade unionists to hold meetings in trade union premises, freedom of opinion expressed through speech and the press and the right of organised workers to receive a fair trial at the earliest possible moment in case of arrest.

12th Report, Case No. 65, para. 128; 36th Report, Case No. 190, para. 211.

2. Right of assembly

Trade union meetings and intervention by the authorities

See also: 90, 171.

308.

Freedom of assembly for trade union purposes constitutes one of the fundamental elements of trade union rights.

Second Report, Case No. 21, para. 23; Seventh Report, Case No. 56, para. 67; 14th Report, Case No. 104, para. 102; 17th Report, Case No. 97, para. 154; 19th Report, Case No. 110, para. 81; 24th Report, Case No. 121, para. 78; 25th Report, Case No. 152, para. 221; 97th Report, Case No. 519, para. 18; 101st Report, Case No. 419, para. 194.

309.

Freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

58th Report, Case No. 253, para. 639; 66th Report, Case No. 261, para. 175; 70th Report, Case No. 288, para. 79; 72nd Report, Case No. 260, para. 87; 76th Report, Case No. 379, para. 375; 78th Report, Cases Nos. 397 and 400, para. 300; 85th Report, Cases Nos. 300, 311 and 321, para. 162; 104th Report, Case No. 479, para. 21; 105th Report, Case No. 530, para. 48; 116th Report, Cases Nos. 520 and 540, para. 261.

310.

The right of members of trade unions to meet in their own premises for the discussion of trade union matters constitutes a fundamental trade union right.

Seventh Report, Case No. 56, para. 67.

311.

The right of trade unions to hold meetings freely in their own premises, without the need for previous authorisation and without control by the public authorities, is a fundamental element in freedom of association.

12th Report, Case No. 16, para. 406; 27th Report, Case No. 159, para. 373; 30th Report, Case No. 172, para. 185; 40th Report, Case No. 161, para. 13; 50th Report, Case No. 240, para. 39; 66th Report, Case No. 298, para. 536; 78th Report, Case No. 379, para. 240; 89th Report, Case No. 452, para. 110; 107th Report, Cases Nos. 251 and 414, para. 39; 108th Report, Case No. 530, para. 47; 114th Report, Case No. 604, para. 291.

312.

In normal times, measures taken by the authorities in order to uphold the law should not in any way result in employers' and workers' organisations being unable to hold their annual congresses.

First Report, Case No. 8, para. 68.

313.

Workers' and employers' organisations should have the right to hold congresses without previous authorisation and to draw up their agendas in full freedom.

Fourth Report, Case No. 38, para. 180.

314.

In one case where a trade union congress was banned by the authorities because of certain specific facts which gave reason to believe that the meeting might deviate from trade union purposes and be used for political ends, the Committee called attention to the desirability of giving the trade union movement the greatest possible measure of freedom of action in the occupational sphere which is compatible with the maintenance of public order, and it considered also that it would be desirable for the parties concerned to have a regard to the principles

enumerated in the resolution on the independence of the trade union movement adopted by the International Labour Conference in 1952.

12th Report, Case No. 61, paras. 489 and 491.

315.

In one case in which the Government admitted that a trade union congress held in trade union premises was the object of police and military control, the Committee felt unable to accept the Government's explanation that its intervention was justified by the mere possibility that illegal acts might be committed. Police and military interference, such as that admitted by the Government, during a trade union congress is an infringement of freedom of association.

27th Report, Case No. 159, para. 373.

316.

The presence of police officers at trade union meetings might constitute an interference from which by virtue of Article 3 of Convention No. 87, the public authorities should refrain.

66th Report, Case No. 298, para. 536; 107th Report, Cases Nos. 251 and 414, para. 39.

317.

The obligation placed on occupational organisations to accept the presence of a representative of the authorities at their meetings would, beyond any possible doubt, constitute a restriction on the free activity of such organisations.

40th Report, Case No. 161, para. 13.

318.

A provision under which a representative of the authorities can attend trade union meetings may have its effect on the deliberations and on the decisions taken (especially if this representative is entitled to take the floor), even though this may not have been the original intention. Hence, it might conceivably constitute an act of

interference incompatible with the principle that trade unions should have the right to meet freely in their own premises, without prior authorisation and without supervision by the public authorities.

112th Report, Case No. 385, paras. 72 and 73.

319.

A situation in which the meetings of a central trade union and its general council meetings are subject to the requirement of permission by the authorities, to furnishing the names of the speakers and the agenda, and to allowing tape recorders to be placed where they are held is incompatible with the generally recognised right of trade unions to hold meetings in freedom.

70th Report, Case No. 298, para. 354.

Public meetings and demonstrations

320.

The right to organise public meetings is an important element in trade union rights. In this connection, the Committee has always drawn a distinction between demonstrations in pursuit of purely trade union objectives, which it has considered as falling within the exercise of trade union rights and those designed to achieve other ends.

First Report, Case No. 24, para. 85; Third Report, Case No. 17, para. 51; Sixth Report, Case No. 40, para. 487; 12th Report, Case No. 16, para. 403; 22nd Report, Case No. 148, para. 102.

321.

The right to organise public meetings, particularly on the occasion of May Day, constitutes an important aspect of trade union rights.

15th Report, Case No. 99, para. 25; 78th Report, Case No. 388, para. 275; 85th Report, Case No. 442, para. 546; 95th Report, Case No. 497, para. 320; 108th Report, Case No. 553, para. 72.

322.

Although the right of holding trade union meetings is a basic requisite of the free exercise of trade union rights, the organisations concerned must observe the general provisions relating to public meetings, which are applicable to all. This principle is set forth in Article 8 of Convention No. 87, which provides that the workers and their organisations, like other persons or organised collectivities, shall respect the law of the land.

13th Report, Case No. 62, para. 75; 22nd Report, Case No. 148, para. 102; 25th Report, Case No. 136, para. 165; 33rd Report, Case No. 178, para. 45; 70th Report, Case No. 288, para. 84; 72nd Report, Case No. 352, para. 196; 87th Report, Case No. 363, para. 89; 108th Report, Case No. 530, para. 47; Case No. 562, para. 81; and Cases Nos. 451, 456 and 526, para. 141.

323.

The right to hold trade union meetings cannot be interpreted as releasing organisations from the obligation to comply with reasonable formalities when they desire to make use of public premises.

67th Report, Case No. 277, para. 61.

324.

The Committee considered that the prohibition of demonstrations or processions on the public highway in the busiest parts of a city, when it was feared that disturbances might occur, does not constitute an infringement of trade union rights.

15th Report, Case No. 99, paras. 26 and 28; 17th Report, Case No. 97, para. 154; 33rd Report, Case No. 178, para. 45; 56th Report, Case No. 252, para. 68.

325.

It rests with the government, which is responsible for the maintenance of public order, to decide in the exercise of its corresponding powers whether meetings, including trade union meetings, may in certain special circumstances endanger

public order and security and to take adequate preventive measures.

78th Report, Case No. 388, para. 277; 108th Report, Case No. 530, para. 47; Case No. 553, para. 72; and Case No. 562, para. 81; 114th Report, Cases Nos. 574, 588 and 593, para. 191.

326.

The enactment of emergency regulations empowering the government to place restrictions on public meetings applicable not only to public trade union meetings but to all public meetings and occasioned by events which the government considered so serious as to call for the declaration of a state of emergency, does not in itself constitute a violation of trade union rights.

25th Report, Case No. 136, para. 165; 72nd Report, Case No. 352, para. 196; 108th Report, Cases Nos. 451, 456 and 526, para. 141.

Meetings and labour disputes

327.

The right to strike and that of organising union meetings are essential elements of trade union rights, and measures taken by the authorities to ensure the observance of the law should not, therefore, prevent unions from organising meetings during labour disputes.

Second Report, Case No. 28, para. 68; 22nd Report, Case No. 148, para. 102; 53rd Report, Case No. 245, para. 47; 71st Report, Case No. 273, para. 75.

International trade union meetings

328.

Trade union meetings of an international nature may give rise to special problems, not only because of the nationality of the participants but also in connection with the international policy and commitments of the country in which the

meeting is to take place. In this connection the government of a particular country may consider it necessary to adopt restrictive measures on the grounds of certain special circumstances prevailing at a particular time. Such measures might be justified in exceptional cases, having regard to specific situations, and provided they conform to the laws of the country. However, it should never be possible to apply measures of a general nature against particular trade union organisations unless in each case sufficient grounds exist to justify the government decision - such as genuine dangers which may arise for the international relations of a State or for safety and public order. Otherwise the right of assembly, the exercise of which by international organisations should also be recognised, would be seriously restricted.

108th Report, Case No. 530, paras. 53 and 54.

3. Freedom of expression

General principles

329.

The right to express opinions through the press or otherwise is one of the essential elements of trade union rights.

Second Report, Case No. 21, para. 23; 12th Report, Case No. 75, para. 290; 14th Report, Case No. 101, para. 73; 24th Report, Case No. 125, para. 219; 25th Report, Case No. 140, para. 272; 33rd Report, Case No. 178, para. 57; 48th Report, Case No. 191, para. 81; 57th Report, Case No. 221, para. 94; 60th Report, Case No. 274, para. 240; 62nd Report, Case No. 224, para. 96; 68th Report, Case No. 300, para. 216; 70th Report, Case No. 291, para. 275; 85th Report, Case No. 291, para. 340; Cases Nos. 300, 311 and 321, para. 119; 101st Report, Case No. 503, para. 383; 105th Report, Case No. 528, para. 273; 108th Report, Cases Nos. 451, 456 and 526, para. 148; 114th Report, Case No. 604, para. 291.

330.

While the Committee has been especially concerned in cases in which the freedom of newspapers owned by trade unions is concerned, it has not suggested that the right of a union to express opinions through the independent press - if that press is prepared to print them - is to be distinguished from the right to express opinions in purely trade union newspapers.

60th Report, Case No. 274, para. 240.

331.

The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organisations should enjoy freedom of opinion and expression at their meetings,

in their publications, and in the course of other trade union activities.

116th Report, Cases Nos. 520 and 540, para. 261.

Authorisation and censorship of publications

332.

In a situation where the law imposes on the proprietors of trade union newspapers the obligation to request authorisation from the Ministry, the question of a possible restriction of the free exercise of the right of trade union publication depends essentially on the conditions governing the granting of authorisation and the reasons for which it may be accorded or refused.

17th Report, Case No. 104, para. 144; 108th Report, Cases Nos. 451, 456 and 526, para. 149.

333.

In one case over twelve months elapsed before the trade union's request for a licence was granted. Further, many such applications were received each year and few licences were issued. The Government gave no other reasons for the delay in this particular instance. In these circumstances, the Committee considered that for a central national organisation of workers to be deprived for such a period of the right to publish a trade union newspaper must of necessity have involved some interference with the right of the organisation to organise its activities and to formulate its programmes. The Committee considered that it was desirable to ensure in cases in which the issue of a trade union publication is subject to a licence being granted, that any application for such a licence should be considered and dealt with by an expeditious procedure.

33rd Report, Case No. 178, para. 57.

334.

If trade unions before being able to publish a newspaper are required to furnish a substantial bond, this would constitute, especially in the case of smaller unions, such an unreasonable condition as to be incompatible with the

exercise of the right to express their opinions through the press.

85th Report, Cases Nos. 300, 311 and 321, para. 119.

335.

The fear of the authorities of seeing a trade union newspaper serve political ends foreign to trade union activities or which, at least, lie far outside their normal sphere is not a sufficient reason for refusal to allow the appearance of such a newspaper.

62nd Report, Case No. 224, para. 97.

336.

The publication and distribution of news and information of general or special interest to trade unions and their members constitutes a legitimate trade union activity and the application of measures for the control of publication and information may involve a serious interference by administrative authorities with such activity. In such cases the exercise of administrative authority should be subject to judicial review at the earliest possible moment.

Sixth Report, Case No. 49, para. 806;
108th Report, Cases Nos. 451, 456 and 526, para. 149.

337.

The discretionary power of the public authorities to revoke the licence granted to a trade union newspaper, without their decisions giving rise to any right of appeal to a court of law, is not compatible with the provisions of Convention No. 87 which guarantees the right of workers' organisations to organise their activities without interference on the part of the public authorities.

85th Report, Case No. 291, para. 365.

338.

The Committee considered that, while the imposition of a general censorship is primarily a matter related to civil liberties rather than to trade union rights, the

application of a press censorship during an industrial dispute may have a direct effect on the conduct of the dispute and may prejudice the parties by not allowing the true facts connected with the dispute to become known.

25th Report, Case No. 152, para. 225.

Publications of a political character

339.

Trade union organisations, when issuing their publications, should have regard, in the interests of the development of the trade union movement, to the principles enunciated by the International Labour Conference at its 35th Session (1952) for the protection and independence of the trade union movement and the safeguarding of its fundamental task of advancing the social and economic well-being of the workers.

12th Report, Case No. 75, para. 290; 14th Report, Case No. 101, para. 73; 24th Report, Case No. 125, para. 219; 27th Report, Case No. 156, para. 280.

340.

It is only in so far as trade union organisations do not allow their occupational demands to assume a clearly political aspect that they can legitimately claim that there should be no interference with their activities.

12th Report, Case No. 75, para. 290.

341.

In one case where the distribution of all the publications of a trade union organisation was prohibited from being distributed the Committee suggested that the order in question be re-examined in the light of the principle that trade union organisations should have the right to distribute the publications in which their programmes are formulated, with a view to distinguishing among the publications examined between those which deal with problems normally regarded as falling directly or indirectly within the

competence of trade unions and those which are obviously political or anti-national in character.

12th Report, Case No. 75, para. 291.

342.

The Committee, while recognising that there may be cases in which it is impossible or administratively impracticable to distinguish between the publications which are of an occupational character and those which are political in character has emphasised the importance which it attaches to such a distinction being drawn wherever feasible.

14th Report, Case No. 101, para. 74.

343.

In one case where a trade union newspaper in its allusions and accusations against the Government, seemed to have exceeded the admissible limits of controversy, the Committee pointed out that trade union publications should refrain from extravagances in the language used. The primary role of publications of this type should be to deal in their columns with matters essentially relating to the defence and furtherance of the interests of the unions' members in particular and with labour questions in general. The Committee, nevertheless, recognised that it is difficult to draw a clear distinction between what is political and what is properly speaking trade union in character. It pointed out that these two notions overlap, and it is inevitable and sometimes usual for trade union publications to take a stand on questions having political aspects as well as on strictly economic or social questions.

112th Report, Case No. 528, paras. 112-115.

Seizure of publications

344.

While it is possible to accept that the occasional seizure of a trade union publication might be justified, the attitude adopted by the authorities in systematically seizing a trade union newspaper does not seem to be compatible with the principle that the right to express opinions through the

press or otherwise is one of the essential elements of trade union rights.

112th Report, Case No. 528, para. 116.

Freedom of speech at the International Labour Conference

345.

The Committee has pointed out that it is established that delegates of workers' and employers' organisations to the International Labour Conference deal in their speeches with questions which are of direct or indirect concern to the ILO. There would be the risk of the functioning of the Conference being considerably hampered and the freedom of speech of the delegates of workers' and employers' organisations being paralysed if these delegates were to be under threat of criminal prosecutions based, directly or indirectly, on the contents of their speeches at the Conference. Article 40 of the Constitution of the Organisation provides that delegates to the Conference shall enjoy "such immunities as are necessary for the independent exercise of their functions in connection with the Organisation". The Committee has emphasised that the right of delegates to the Conference to express freely their point of view on questions within the sphere of competence of the Organisation implies that the delegates of employers' and workers' organisations have the right to inform their members in their respective countries of their speeches. The arrest and sentencing of a delegate following his speech to the Conference jeopardised freedom of speech for delegates as well as the immunities they should enjoy in this connection.

108th Report, Case No. 560, paras. 348 and 349, 354 and 357; 112th Report, Case No. 560, paras. 124, 126 and 127. See also the "Resolution concerning freedom of speech of non-government delegates to the ILO meetings" adopted by the International Labour Conference at its 54th Session (1970).

Miscellaneous

346.

In a situation where restrictions imposed by a revolutionary government on certain publications during a period

of emergency appeared mainly to have been based on reasons of a general political character, the Committee, while bearing in mind the exceptional character of these measures, drew the attention of the Government to the importance of ensuring respect for the freedom of trade union publications.

25th Report, Case No. 140, para. 273.

347.

A trade unionist having been convicted by an ordinary court of law of having in an address to strikers, made a subversive statement which seemed clearly to go beyond what a trade union leader, like any other person, can make in a public address without incurring penal sanctions against which no privilege can be claimed by reason of the trade union status of the person concerned, the Committee did not consider that the application of the provisions of the law in this particular instance constituted an infringement of trade union rights.

70th Report, Case No. 298, para. 344.

348.

In accordance with one law the persons concerned (operators of trade union radio transmitting stations) were given the opportunity of requesting licences. The granting of licences was subject to the fulfilment of technical requirements and, furthermore, to other conditions such as the interest and quality of the programmes; the latter conditions, in view of their nature, appeared to leave the administrative authorities wide powers of discretion. The Committee considered that in these circumstances, it was of the greatest importance that guarantees should exist against arbitrary or ill-founded decisions and, in particular, that those concerned should be able to appeal against the administrative decision.

108th Report, Cases Nos. 451, 456 and 526, para. 150.

4. Searches of trade union premises

349.

The Committee, while recognising that trade unions, like other associations or persons, cannot claim immunity from search of their premises, has emphasised the importance which it attaches to the principle that such a search should only be made following the issue of a warrant by the ordinary judicial authority after that authority has been satisfied that reasonable grounds exist for supposing that evidence exists on the said premises material to a prosecution for an offence under the ordinary law and provided that such search is restricted to the purposes in respect of which the warrant was issued.

58th Report, Case No. 179, para. 232; 62nd Report, Case No. 192, para. 57; 67th Report, Case No. 278, para. 116; 71st Report, Case No. 273, para. 75; 74th Report, Case No. 363, para. 217; 78th Report, Case No. 360, para. 183; 81st Report, Case No. 388, para. 61; 101st Report, Case No. 485, para. 278; 103rd Report, Case No. 527, para. 69; Case No. 514, para. 216; 108th Report, Case No. 555, para. 339.

350.

If trade union premises were used as a refuge by persons committing outrages or as an assembly point by a political organisation, the trade unions concerned could not claim any immunity against the entry of the authorities into the premises.

Sixth Report, Case No. 40, para. 536; 58th Report, Case No. 179, para. 230.

351.

In a situation where large-scale military operations were being undertaken and where the requisitions made by the army were not limited to trade union premises but affected premises of widely varying kinds, the Committee considered that sufficient proof had not been furnished to show that trade union rights had been infringed.

27th Report, Case No. 186, para. 284.

5. Right to security of the person

Arrest and detention of trade unionists

352.

Measures of preventive detention may involve a serious interference with trade union activities which it would seem necessary to justify by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied with a reasonable period.

> Fourth Report, Case No. 5, para. 45; Sixth Report, Case No. 47, paras. 731 and 734; Case No. 49, para. 804; 12th Report, Case No. 87, paras. 237 and 240; 19th Report, Case No. 110, para. 76; 24th Report, Case No. 142, para. 133; 25th Report, Case No. 152, para. 219; Case No. 136, para. 154; 27th Report, Case No. 156, para. 272; Case No. 143, para. 186; 38th Report, Case No. 156, para. 20; 58th Report, Case No. 251, para. 596; 66th Report, Case No. 290, para. 47; 70th Report, Case No. 325, para. 19; 74th Report, Case No. 363, para. 213; 78th Report, Case No. 360, para. 185; 81st Report, Case No. 421, para. 202; 85th Report, Case No. 441, para. 56; 101st Report, Case No. 514, para. 462; 108th Report, Case No. 510, para. 243; 111th Report, Case No. 564, para. 45; 112th Report, Case No. 569, para. 187; 114th Report, Cases Nos. 574, 588 and 593, para. 201.

353.

In all cases in which trade union leaders are preventively detained, these measures may involve a serious interference with the exercise of trade union rights and the Committee has always emphasised the right of all detained persons to receive a fair trial at the earliest possible moment.

> 62nd Report, Case No. 251, para. 159; 81st Report, Case No. 419, para. 193; 83rd Report, Case No. 303, para. 225; Case No. 418, para. 358; 85th Report, Cases Nos. 300, 311 and 321, para. 110; 91st Report, Case No. 472, para. 9; 108th Report, Case No. 354, para. 320.

354.

Because of the fact that the detention may involve serious interference with trade union rights and because of the importance which it attaches to the principle of fair trial, the Committee has pressed the governments to bring detainees to trial in all cases, irrespective of the reasons put forward by the governments for the detention.

70th Report, Case No. 325, para. 20.

355.

The holding of persons indefinitely in custody without trial on account of the difficulty of securing evidence according to normal legal procedure is a practice which involves inherent danger of abuse and is for this reason subject to criticism.

27th Report, Case No. 136, para. 399.

356.

Legislation which permits the Minister in his discretion to hold trade union leaders in solitary confinement for a ninety days' period which can be renewed, without trial or even without charges being laid, is incompatible with the right to perform trade union activities and functions and the right to a fair trial at the earliest possible moment.

85th Report, Cases Nos. 300, 311 and 321, para. 110.

357.

In a case where trade union leaders who had been arrested had not been placed at the disposal of the judicial authorities but where the police had released them after a few days without apparently having discovered any evidence which would justify any charge being brought against them, the Committee considered that it is one of the fundamental rights of the individual that a detained person should be brought without delay before the appropriate judge, this right being recognised in such instruments as the International Covenant on Civil and Political Rights, and

the American Declaration of the Rights and Duties of Man. In the case of persons engaged in trade union activities, this is one of the civil liberties which should be ensured by the authorities in order to guarantee the full effectiveness of the exercise of trade union rights.

111th Report, Case No. 564, para. 46.

358.

The detention by authorities of trade unionists concerning whom no grounds for conviction are subsequently found is liable to involve restrictions of trade union rights. Governments should take steps to ensure that the authorities concerned have instructions appropriate to eliminate the danger of detention for trade union activities.

27th Report, Case No. 104, para. 45; 30th Report, Case No. 125, para. 39; 72nd Report, Case No. 352, para. 192; 74th Report, Case No. 332, para. 114; Case No. 363, para. 215; 76th Report, Case No. 291, para. 163; 78th Report, Case No. 360, para. 185; 81st Report, Case No. 291, para. 90; 85th Report, Case No. 441, para. 56; 93rd Report, Case No. 385, para. 189; 108th Report, Case No. 510, para. 243; Case No. 554, para. 320; 111th Report, Case No. 564, para. 47; 116th Report, Cases Nos. 572, 581, 586, 596 and 610, para. 327.

359.

The Committee has insisted upon the importance which should be attached to the principle that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

108th Report, Case No. 554, para. 321.

360.

The preventive detention of trade unionists on the ground that breaches of the law may take place in connection with a strike involves a serious danger of infringement of trade union rights.

27th Report, Case No. 143, para. 183.

361.

The detention of any person after his acquittal by the competent court is not compatible with the principle that trade unionists accused of political offences or criminal acts should be speedily brought to trial before an impartial and independent judicial authority.

38th Report, Case No. 156, para. 20.

Guarantees of due process of law

See also: 379, 381, 382.

362.

It should be the policy of every government to ensure observance of the rights of man and, especially, of the right of all detained or accused persons to receive a fair trial at the earliest possible moment.

Fourth Report, Case No. 5, para. 51; Sixth Report, Case No. 47, paras. 731 and 734; Case No. 49, para. 804; 16th Report, Case No. 112, para. 69; 19th Report, Case No. 110, para. 76; 22nd Report, Case No. 58, para. 39; 24th Report, Case No. 100, para. 39; 25th Report, Case No. 152, para. 219; Case No. 136, para. 154; 26th Report, Cases Nos. 131 and 141, para. 67; 27th Report, Case No. 143, para. 153; Case No. 156, para. 272; 30th Report, Case No. 143, para. 148; 58th Report, Case No. 251, para. 596; 66th Report, Case No. 290, para. 47; 70th Report, Case No. 325, para. 19; 74th Report, Case No. 363, para. 213; Case No. 294, para. 183; 78th Report, Case No. 360, para. 185; 81st Report, Case No. 421, para. 202; 83rd Report, Cases Nos. 283, 329 and 425, para. 140; 85th Report, Case No. 441, para. 56; 87th Report, Cases Nos. 251 and 414, para. 51; 97th Report, Case No. 519, para. 18; 101st Report, Case No. 514, para. 462; 103rd Report, Case No. 425, para. 98; 108th Report, Case No. 510, para. 243; 111th Report, Case No. 564, para. 45; 112th Report, Case No. 569, para. 187.

363.

The safeguards of normal judicial procedure should not only be embodied in the law, but also applied in practice.

83rd Report, Cases Nos. 283, 329 and 425, para. 140.

364.

The Committee has emphasised the importance which it has attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the government consider have no relation to their trade union functions.

24th Report, Case No. 125, para. 216; 28th Report, Case No. 147, para. 239; Case No. 156, para. 273; 30th Report, Case No. 143, para. 153; 33rd Report, Case No. 184, para. 90; 39th Report, Case No. 203, para. 18; 44th Report, Case No. 194, para. 117; Case No. 202, para. 141; Case No. 200, para. 162; 45th Report, Case No. 214, para. 129; 48th Report, Case No. 191, para. 84; 49th Report, Case No. 229, paras. 95 and 96; Case No. 216, para. 260; Case No. 235, para. 301; 56th Report, Case No. 252, para. 69; 66th Report, Case No. 297, para. 197; 67th Report, Case No. 303, para. 319; 70th Report, Case No. 253, para. 69; 72nd Report, Case No. 260, para. 91; 78th Report, Case No. 388, para. 269; 81st Report, Case No. 373, para. 113; Case No. 385, para. 150; 84th Report, Case No. 423, para. 75; 85th Report, Cases Nos. 300, 311 and 321, para. 110; Cases Nos. 282 and 401, para. 309; Case No. 365, para. 472; 93rd Report, Cases Nos. 409 and 456, para. 231; Case No. 476, para. 296; 99th Report, Case No. 506, para. 93; 101st Report, Case No. 485, para. 296; Case No. 503, para. 330; Case No. 519, para. 501; 114th Report, Cases Nos. 574, 588 and 593, para. 185; 116th Report, Cases Nos. 572, 581, 586, 596 and 610, para 326; 118th Report, Case No. 492, para. 107; 120th Report, Case No. 608, para. 233.

365.

In a number of cases where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to

general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegation.

Sixth Report, Case No. 18, paras. 323-326; Case No. 44, paras. 593-595; 11th Report, Case No. 72, para. 6; 12th Report, Case No. 65, paras. 102-105; Case No. 66, paras. 140-146; 15th Report, Case No. 110, para. 241; 27th Report, Case No. 156, para. 273; Case No. 159, para. 370; 44th Report, Case No. 194, para. 117; Case No. 202, para. 141; 48th Report, Case No. 191, para. 84; 49th Report, Case No. 229, para. 95; Case No. 168, para. 153; Case No. 216, para. 260; Case No. 235, para. 301; 58th Report, Case No. 251, para. 597; Case No. 253, para. 632; 66th Report, Case No. 294, para. 486; Case No. 295, para. 506; 67th Report, Case No. 303, para. 318; 70th Report, Case No. 323, para. 384; 74th Report, Case No. 371, para. 248; 76th Report, Case No. 283, para. 116; Case No. 364, para. 343; 78th Report, Case No. 383, para. 253; Cases Nos. 397 and 400, para. 305; 81st Report, Case No. 385, para. 148; Case No. 396, para. 173; 83rd Report, Cases Nos. 283, 329 and 425, para. 168; Case No. 370, para. 246; Case No. 399, para. 295; Case No. 418, para. 353; 84th Report, Case No. 423, para. 75; 85th Report, Cases Nos. 282 and 401, para. 314; Case No. 422, para. 534; 87th Report, Cases Nos. 251 and 414, para. 48; 90th Report, Case No. 432, para. 36; 93rd Report, Cases Nos. 409 and 456, para. 230; Case No. 476, para. 294; 95th Report, Case No. 485, para. 288; 98th Report, Case No. 358, para. 42; 103rd Report, Case No. 536, paras. 292 and 294; 108th Report, Case No. 555, para. 337; 112th Report, Case No. 569, para. 186; 114th Report, Cases Nos. 574, 588 and 593, para. 223.

366. In a number of cases the Committee has asked the governments concerned to communicate the texts of any

judgments that have been delivered together with the grounds adduced therefor.

58th Report, Case No. 262, para. 671; Case No. 234, para. 589; 60th Report, Case No. 274, para. 281; 76th Report, Case No. 260, para. 101; 78th Report, Case No. 383, para. 257; Cases Nos. 397 and 400, para. 307; 81st Report, Case No. 385, para. 152; 83rd Report, Case No. 271, para. 124; Cases Nos. 283, 329 and 425, para. 168; Case No. 370, para. 253; Case No. 373, para. 270; Case No. 418, para. 359; 85th Report, Cases Nos. 282 and 401, para. 319; 92nd Report, Case No. 398, para. 52; 93rd Report, Case No. 476, para. 298; 95th Report, Case No. 454, para. 228; Case No. 485, para. 289; 98th Report, Case No. 358, para. 48; Case No. 503, para. 257; 99th Report, Case No. 479, para. 27; 103rd Report, Case No. 514, para. 226; Case No. 536, para. 294; 108th Report, Case No. 333, para. 338; Case No. 560, para. 357; 112th Report, Case No. 569, para. 189.

367.

The Committee has emphasised that when it requests a government to furnish records of judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known.

74th Report, Case No. 298, para. 51.

368.

In cases of allegations relating to the prosecution and sentencing of trade union leaders, the only question to be decided is the real reason for the measures complained of being taken, and only if these measures have been taken by reason of legitimate trade union activities can there be any infringement of freedom of association. In several of these cases the Committee has taken the view that it must examine the allegations presented having regard to the exceptional

circumstances which may subsist as a result of a situation of internal crisis or of hostilities.

Fourth Report, Case No. 30, paras. 140-161; Sixth Report, Case No. 18, paras. 323-352; Case No. 22, paras. 353-383; Case No. 55, paras. 875-928; 11th Report, Case No. 70, paras. 88-91; 12th Report, Case No. 65, paras 102-130; Case No. 93, paras. 247-256; Case No. 16, paras. 383-385; Case No. 69, paras. 439 and 440; 15th Report, Case No. 109, para. 223; 24th Report, Case No. 100, para. 37; 26th Report, Cases Nos. 134 and 141, para. 66; 36th Report, Case No. 185, para. 160; 49th Report, Case No. 184, para. 66; 58th Report, Case No. 220, para. 23; 114th Report, Cases Nos. 574, 588 and 593, para. 184.

369.

The Committee has pointed out that where persons have been sentenced on grounds having no relation to trade union rights the matter falls outside its competence, but it has emphasised that the question as to whether such a matter is one relating to a criminal offence or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned.

58th Report, Case No. 253, para. 632; 62nd Report, Case No. 251, para. 159; 66th Report, Case No. 251, para. 417; 67th Report, Case No. 303, para. 318; 78th Report, Case No. 388, para. 269; 85th Report, Case No. 422, para. 535; 114th Report, Case No. 536, para. 112; 116th Report, Case No. 569, para. 272; 118th Report, Case No. 492, para. 107; 120th Report, Case No. 608, para. 233.

370.

If in certain cases the Committee has reached the conclusion that allegations relating to measures taken against trade unionists did not call for further examination, this was only after it had received information from the governments showing sufficiently precisely and with sufficient detail that the measures were in no way occasioned by trade union activities, but solely by activities outside the trade

union sphere which were either prejudicial to public order or of a political nature.

Second Report, Case No. 31, para. 79; Third Report, Case No. 6, para. 36; Sixth Report, Case No. 22, paras. 377-383; 12th Report, Case No. 16, paras. 386-398; 17th Report, Case No. 104, para. 219; 19th Report, Case No. 110, paras. 74-77; 24th Report, Case No. 142, paras. 130-134; 25th Report, Case No. 140, para. 263; 30th Report, Case No. 143, para. 146; 33rd Report, Case No. 184, paras. 88 and 96; 44th Report, Case No. 200, para. 182; 58th Report, Case No. 251, para. 597; 66th Report, Case No. 294, para. 486; Case No. 295, para. 506; 70th Report, Case No. 253, para. 69; Case No. 202, para. 132; Case No. 323, para. 384; 74th Report, Case No. 371, para. 248; 76th Report, Case No. 283, para. 116; Case No. 291, para. 160; Case No. 364, para. 342; 78th Report, Case No. 383, para. 253; Cases Nos. 397 and 400, para. 305; 81st Report, Case No. 385, para. 148; Case No. 396, para. 173; 83rd Report, Cases Nos. 283, 329 and 425, paras. 137 and 168; Case No. 370, para. 246; Case No. 399, para. 295; Case No. 418, para. 353; 84th Report, Case No. 423, para. 75; 85th Report, Case No. 422, para. 534; 87th Report, Cases Nos. 251 and 414, para. 48; 90th Report, Case No. 432, para. 36; 93rd Report, Cases Nos. 409 and 456, para. 230; Case No. 476, para. 294; 95th Report, Case No. 194, para. 163; Case No. 485, para. 288; 98th Report, Case No. 358, para. 42; 103rd Report, Case No. 536, para. 292; 108th Report, Case No. 555, para. 337; 112th Report, Case No. 569, para. 185; 114th Report, Cases Nos. 574, 588 and 593, para. 223; 116th Report, Cases Nos. 572, 581, 586, 596 and 610, para. 327.

371. In cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned.

103rd Report, Case No. 536, para. 292; 112th Report, Case No. 569, para. 185; 116th Report, Cases Nos. 572, 581, 586, 596 and 610, para. 327.

372.

The Committee is not required to express an opinion on the question of the granting of permission for a foreign lawyer to plead.

105th Report, Case No. 528, paras. 261 and 265.

Detentions during a state of emergency

373.

The Committee, while refraining from expressing an opinion on the political aspects of a state of emergency, has always emphasised that measures of detention must be accompanied by adequate judicial safeguards applied within a reasonable period and that all detained persons must receive a fair trial at the earliest possible moment.

13th Report, Case No. 62, para. 78;
25th Report, Case No. 136, para. 155;
33rd Report, Case No. 184, para. 124;
116th Report, Cases Nos. 572, 581, 586, 596 and 610, para. 326.

374.

In circumstances approximate to a situation of civil war, the Committee has emphasised the importance which it attaches to all detained persons receiving a fair trial at the earliest possible moment.

Fourth Report, Case No. 30, para. 160.

375.

The requirement of due process would not appear to be fulfilled if under the national law the effect of a state of siege is that a court to which application is made for habeas corpus cannot make and does not make an examination of the merits of the case.

25th Report, Case No. 140, para. 266; 114th Report, Cases Nos. 574, 588 and 593, para. 201; 116th Report, Cases Nos. 581, 586, 596 and 610, para. 326.

Freedom of movement

376. The restriction of a person's movements to a limited area, accompanied by a prohibition of entry into the area in which his trade union operates and in which he normally carries on his trade union functions, is inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions; such a restriction should also be accompanied by adequate judicial safeguards applied within a reasonable period and, especially, by observance of the right of those concerned to receive a fair trial at the earliest possible moment.

25th Report, Case No. 152, para. 220; 58th Report, Case No. 251, para. 596; 85th Report, Cases Nos. 300, 311 and 321, para. 110; 114th Report, Cases Nos. 574, 588 and 593, paras. 189-190.

377. The granting of freedom to a trade unionist on condition of his leaving the country is not compatible with the free exercise of trade union rights.

25th Report, Case No. 140, para. 266; 78th Report, Case No. 360, para. 175.

Maltreatment of prisoners

378. With respect to the allegations relating to the ill-treatment of and other punitive measures against workers who took part in strikes, the Committee pointed out the importance that it attaches to the right of trade unionists, like all other persons, to enjoy the guarantees afforded by due process of law in accordance with the principles enunciated in the Universal Declaration of Human Rights.

30th Report, Case No. 143, para. 148; 62nd Report, Case No. 192, para. 71.

Special bodies and summary procedures

379.

In all cases where trade unionists had been the subject of measures or decisions emanating from bodies of a special nature, the Committee emphasised the importance which it attaches to the guarantees of due legal process.

27th Report, Case No. 157, para. 327; Case No. 160, para. 486; 36th Report, Case No. 185, para. 165; 83rd Report, Cases Nos. 283, 329 and 425, para. 138; 98th Report, Case No. 425, para. 209; 103rd Report, Case No. 425, paras. 97 and 98; 114th Report, Cases Nos. 574, 588 and 593, para. 185.

380.

As regards the sentences of deportation or compulsory residence passed in virtue of an exceptional procedure, the Committee, while recognising that this procedure may be set up because of the situation of crisis experienced by a country, has drawn attention to the desirability of this procedure being attended by all the safeguards necessary to ensure that it shall not be utilised for the purpose of impairing the free exercise of trade union rights and to the importance which it attaches to the trade unions being able to carry on their activities freely in the defence of occupational interests.

16th Report, Case No. 112, paras. 85 and 86; 19th Report, Case No. 121, paras. 168 and 169; 36th Report, Case No. 185, para. 168; 49th Report, Case No. 224, paras. 279 and 281; 58th Report, Case No. 234, para. 583; 74th Report, Case No. 294, para. 182; 101st Report, Cases Nos. 409, 451 and 456, paras. 256 and 257; 108th Report, Cases Nos. 451, 456 and 526, para. 136.

381.

A system in which trade unionists were deported following decisions of public security committees which, by their composition, were administrative tribunals, any right of appeal against these decisions lying only to another administrative tribunal, is one which may not be accompanied by adequate judicial guarantees.

27th Report, Case No. 157, para. 327; 36th Report, Case No. 185, para. 165.

382.

The Committee considered that when trade unionists had been sentenced under summary procedures they did not benefit by all the safeguards of a normal trial. Accordingly, the Committee suggested the possibility of reviewing the cases of those sentenced trade unionists with a view to ensuring that nobody had been deprived of his liberty without benefiting by due process of law before an impartial and independent judicial authority.

114th Report, Cases Nos. 574, 588 and 593, para. 186.

383.

In cases where no trade union rights are specifically involved, the Committee has considered that it is not within its competence to inquire into the extent of secrecy which a country has felt it necessary to introduce, for its security, into its procedure for screening employees in an industry which is being operated more or less on a wartime basis.

Sixth Report, Case No. 46, para. 680.

Non-retroactive nature of the criminal law

384.

The guarantees of due process of law should include the non-retroactive application of the criminal law.

24th Report, Case No. 142, para. 134; 28th Report, Case No. 147, para. 239.

L. GENERAL QUESTIONS

1. Recognition of freedom of association in fact as well as in law

385.

The purpose of the procedure for the examination of cases where violation of freedom of association is alleged is to promote respect for trade union rights, both in law and in fact.

> First Report, para. 31; 69th Report, Case No. 285, para. 58; 84th Report, Case No. 423, para. 70; 92nd Report, Case No. 439, para. 162.

386.

The right of workers to establish and form organisations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and in fact.

> 21st Report, Case No. 19, para. 26; 22nd Report, Case No. 58, para. 27; 23rd Report, Case No. 111, para. 107; 67th Report, Case No. 305, para. 105; 69th Report, Case No. 285, para. 58; 84th Report, Case No. 423, para. 70; 92nd Report, Case No. 439, para. 162.

387.

Appropriate measures should be taken to ensure the free exercise of the right to organise of workers and employers even in their relations with other organisations or third parties.

> Sixth Report, Case No. 12, para. 264; 108th Report, Case No. 510, para. 250.

388.

The Committee has not made any distinction between allegations levelled against governments and allegations levelled against persons accused of impairing freedom of

association and has considered whether or not, in each particular case, a government has ensured in its territory the exercise of trade union rights.

16th Report, Case No. 107, para. 52; 108th Report, Case No. 550, para. 303.

389.

The guarantee of equality before the law in trade union matters should be supplemented by measures to promote effective opportunities for all workers in the overseas provinces to establish and join organisations of their own choosing and to participate fully in the trade union movement.

113th Report, Case No. 266, para. 168.

2. Measures taken in exceptional situations

See also: 128, 133, 192, 248, 274-281, 326, 346, 351, 352, 368, 373-375, 380.

390. In cases where the Committee has considered complaints concerning alleged infringements of trade union rights committed under a state of emergency or a state of siege or under the terms of an Internal Security Act, it has always expressed the opinion that it was not competent to come to a decision on the need or the advisability of such legislation, which is a question purely political in character. The Committee was, however, of the opinion that it should consider the repercussions which such legislation might have on the free exercise of trade union rights.

First Report, Case No. 24, paras. 84 and 85; Second Report, Case No. 21, para. 24; Third Report, Case No. 17, para. 51; Fourth Report, Case No. 5, para. 44; Case No. 30, para. 145; Case No. 38, para. 179; Sixth Report, Case No. 40, para. 466; Case No. 46, paras. 657 et seq.; Case No. 49, para. 800; Case No. 2, para. 1012; Seventh Report, Case No. 56, para. 68; 13th Report, Case No. 62, para. 73; 25th Report, Case No. 140, para. 264; 27th Report, Case No. 157, para. 325; 30th Report, Case No. 172, para. 202; Case No. 174, para. 231; 33rd Report, Case No. 184, para. 94; 36th Report, Case No. 192, para. 102; 41st Report, Case No. 199, para. 65; 56th Report, Case No. 216, para. 157; 78th Report, Case No. 364, para. 82; 89th Report, Case No. 452, para. 112; 108th Report, Cases Nos. 451, 456 and 526, para. 141; 110th Report, Case No. 561, para. 218.

391. Measures of a purely political nature, such as a state of siege, are matters which are outside the Committee's terms of reference except in so far as they may have an impact on trade union rights.

103rd Report, Case No. 514, para. 215.

392.

In the cases in which it had to examine allegations against countries which were in a state of political crisis or had just passed through grave disturbances (civil war, revolution, etc.), the Committee considered it necessary, when examining the various measures taken by the governments, including some against trade union organisations, to have regard to such exceptional circumstances when examining the merits of the allegations.

Third Report, Case No. 1, para. 19; Fourth Report, Case No. 30, para. 149; Sixth Report, Case No. 40, para. 561; 12th Report, Case No. 16, para. 383; 16th Report, Case No. 112, para. 86; 17th Report, Case No. 109, para. 118; 19th Report, Case No. 121, para. 169; 24th Report, Case No. 121, para. 69; 25th Report, Case No. 140, para. 261; Case No. 136, para. 144; 33rd Report, Case No. 184, para. 94; 78th Report, Case No. 364, para. 82.

393.

In cases where there is a state of siege, it is desirable that the government, in its relations with occupational organisations and their representatives, should rely on measures provided for in ordinary law rather than on emergency measures which are liable by their very nature to involve certain restrictions on fundamental rights.

56th Report, Case No. 216, para. 157; 90th Report, Cases Nos. 282 and 401, para. 93.

394.

Measures taken in a state of emergency may constitute serious interference by the authorities in trade union affairs, contrary to Article 3 of Convention No. 87, except where such measures are necessary because the organisations concerned have diverged from their trade union objectives and have defied the law. In any case such measures should be accompanied by adequate judicial guarantees which may be invoked with reasonable facility.

120th Report, Cases Nos. 572, 581, 586, 596, 610 and 620, para. 43.

3. Measures or questions of a political character

395.

The Committee has decided to express its view with regard to the application of measures which, although of a political nature and not intended to restrict trade union rights as such, might, nevertheless, affect the exercise of such rights.

19th Report, Case No. 121, para. 167; 24th Report, Case No. 126, para. 91; 30th Report, Case No. 174, para. 234; 33rd Report, Case No. 184, para. 87; 36th Report, Case No. 185, para. 159; 49th Report, Case No. 229, para. 91; 66th Report, Case No. 261, para. 177; 72nd Report, Case No. 294, para. 106; 116th Report, Case No. 385, para. 191.

396.

The Committee has decided, that, even though cases may be political in origin or present certain political aspects, they should be examined in substance if they raise questions directly concerning the exercise of trade union rights.

First Report, para. 29; Sixth Report, Case No. 12, para. 189; Case No. 40, para. 461; 12th Report, Case No. 63, para. 271; Case No. 16, para. 383; 13th Report, Case No. 67, para. 100; 14th Report, Case No. 104, para. 93; 16th Report, Case No. 112, para. 83; 19th Report, Case No. 121, para. 166; 23rd Report, Case No. 111, para. 91; 25th Report, Case No. 136, para. 144; 36th Report, Case No. 185, para. 158; 67th Report, Case No. 303, para. 247.

397.

Political matters not involving the exercise of freedom of association are outside the competence of the Committee and, in these circumstances, the Committee has no jurisdiction of a complaint in so far as the facts out of which it arose may have been acts of sabotage and is likewise incompetent to deal with the political matters referred to in the government's reply.

58th Report, Case No. 253, para. 644.

M. MISCELLANEOUS QUESTIONS

1. Change of government

398.

The Committee when examining allegations concerning the infringement of trade union rights by one Government indicated that there existed a link of continuity between pre-existing and successor governments in the same State and while the latter cannot be held responsible for events which took place under its predecessor it clearly is responsible for any continuing consequences which they may have had since its accession to power.

Second Report, Case No. 13, para. 149; 25th Report, Case No. 129, para. 15; 56th Report, Case No. 159, para. 78; 70th Report, Case No. 260, para. 143; 76th Report, Case No. 323, para. 38; 78th Report, Case No. 316, para. 108; 82nd Report, Case No. 335, para. 63; 83rd Report, Case No. 406, para. 320; 85th Report, Case No. 191, para. 262; 98th Report, Case No. 360, para. 116.

399.

Where a change of régime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which the events on which the complaint is based may have had since its accession to power, even although those events took place under its predecessor.

28th Report, Case No. 146, para. 223; 56th Report, Case No. 159, para. 78.

2. State succession

400.

The procedure for the examination of complaints of alleged infringements of the exercise of trade union rights, as it has been established, provides for the examination of complaints presented against member States of the ILO, and it does not follow that a complaint presented against a given State in respect of one of its territories and relating to matters which did not enter within the self-governing powers of such territory must automatically be considered as maintained against a new State which assumes, henceforth, international responsibilities with regard to the territory within which the events giving rise to the initial complaint are alleged to have taken place. Evidently, it is possible for the consequences of events which gave rise to the presentation of the initial complaint to continue after the setting up of a new State which has become a Member of the ILO, but if such a case should arise, the complainants would be able to have recourse, in respect of the new State, to the procedure established for the examination of complaints relating to infringements of the exercise of trade union rights.

66th Report, Case No. 156, paras. 64 and 65.

3. Loss of human life

401.

The Committee has stressed that the appointment of an independent commission of inquiry by the government concerned is a particularly appropriate method of ascertaining facts and determining responsibilities when disorders have occurred involving loss of human life.

> Second Report, Case No. 31, para. 80; Fourth Report, Case No. 26, para. 124; 15th Report, Case No. 110, para. 236; 28th Report, Cases Nos. 141, 153 and 154, para. 213.

402.

In cases in which the dispersal of public meetings by the police for reasons of public order or other similar reasons has involved loss of life, the Committee has attached special importance to the circumstances being fully investigated by an immediate and independent special inquiry and to the regular legal procedure being followed to determine the justification and responsibility for the action taken by the police.

> 22nd Report, Case No. 148, para. 102; 66th Report, Case No. 298, para. 544; 74th Report, Case No. 363, para. 211; 101st Report, Case No. 526, para. 520; 114th Report, Cases Nos. 574, 588 and 593, para. 224.

4. Status of aliens

See also: 36, 171, 172, 173, 372.

403.

The Committee is not called upon to deal with the general question of the status of aliens not covered by international Conventions, or with cases of expulsion connected with this question.

Second Report, Case No. 27, para. 64; Sixth Report, Case No. 45, para. 603; 11th Report, Case No. 70, para. 87; Case No. 71, para. 102; 36th Report, Case No. 178, para. 44; 105th Report, Case No. 530, para. 48.

404.

It is not for the Committee to deal with measures falling within national legislation concerning aliens unless they have direct repercussions on the exercise of trade union rights.

12th Report, Case No. 16, para. 387; 16th Report, Case No. 117, para. 99; 19th Report, Case No. 133, para. 133; 109th Report, Case No. 557, para. 75; 111th Report, Case No. 563, para. 60.

405.

The Committee, while noting that the measures taken by the authorities in application of the Immigration and Nationality Act relate to the sovereign right which every country has to decide who shall and who shall not be admitted to its territory, was of the opinion that, if the application of these measures were to influence workers in their free choice of a trade union or to result in workers being dismissed or otherwise prejudiced because of their trade union affiliations, they might infringe the principle that workers have the right to join trade unions of their own choosing.

11th Report, Case No. 71, para. 101; 14th Report, Case No. 95, para. 56.

406.

The Committee has pointed out that where a country exercises its sovereign right to decide who shall and who shall not be admitted to its territory, in accordance with legislation applicable to aliens in general and subject to the right to seek the remedies provided by due process of law, particularly cogent evidence would be required to show that measures taken in any individual case constituted an infringement of trade union rights.

25th Report, Case No. 138, para. 48.

407.

The Committee is not competent to express an opinion on questions concerning the validity of a residence permit or to pronounce upon the right of a government to extend or not to extend the validity of such a permit.

109th Report, Case No. 557, para. 77.

5. Conflicts within the trade union movement

408.

The Committee has considered it inappropriate to examine the merits of a jurisdictional conflict between unions.

25th Report, Case No. 152, para. 216.

409.

The Committee has declined to examine cases revolving around an inter-union dispute over union security arrangements.

30th Report, Case No. 182, para. 108; 34th Report, Case No. 188, para. 34.

410.

A matter involving no dispute between the government and the trade unions, but consisting solely in a conflict within the trade union movement itself, is the sole responsibility of the parties themselves.

71st Report, Case No. 318, para. 35.

411.

A complaint against another organisation, if couched in sufficiently precise terms to be capable of examination on its merits, may nevertheless bring the government of the country concerned into question - for example, if the acts of the organisation complained against are wrongfully supported by the government or are of a nature which the government is under a duty to prevent, by virtue of its having ratified an international labour Convention.

73rd Report, Case No. 322, para. 11.

412.

In the case of internal dissension within one and the same trade union federation, in virtue of Article 3 of Convention No. 87 the only obligation of the government is to refrain from any interference which would restrict the

right of the workers' and employers' organisations to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and from any interference which would impede the lawful exercise of that right.

83rd Report, Case No. 418, paras. 345-347.

413.

Article 2 of Convention No. 98 is designed to protect workers' organisations against employers' organisations or their agents or members and not against other workers' organisations or the agents or members thereof. Inter-union rivalry is outside the scope of the Convention.

95th Report, Case No. 448, para. 123.

414.

Violence resulting from inter-union rivalry might constitute an attempt to impede the free exercise of trade union rights. If this were the case and if the acts in question were sufficiently serious, it appears that the intervention of the authorities, in particular the police, would be called for in order to provide adequate protection of these rights. The question of infringement of trade union rights by the government would only arise to the extent that it may have acted improperly on the alleged assaults.

109th Report, Case No. 533, para. 116.

6. Privileges and immunities of delegates to ILO meetings

415.

The Committee expressed its regret that the arrest of a trade unionist as a result of an event arising directly from a strike should have had the effect of preventing a Worker member from attending a session of the Governing Body; it also considered that the independence of the judiciary, once proceedings have been initiated, cannot be invoked by the government in extenuation of action which it admits was initiated by itself. The Committee, therefore, drew attention to the importance which the Governing Body attaches to the principle set forth in article 40 of the Constitution that members of the Governing Body shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

26th Report, Cases Nos. 134 and 141, para. 63.

416.

It is important that no delegate to any organ or conference of the ILO, and no member of the Governing Body, should be interfered with in any way to prevent or to deter him from carrying out his functions.

28th Report, Cases Nos. 141, 153 and 154, para. 206; 61st Report, Case No. 271, para. 50; 83rd Report, Case No. 399, para. 301; Case No. 418, para. 351.

417.

It is the duty of the government both to refrain itself from taking measures calculated to interfere with a delegate to an ILO conference in the exercise of his functions, and to use its influence and take all reasonable steps to ensure that such a delegate is not in any way prejudiced by his acceptance of functions as a delegate or by his conduct as a delegate, and that measures on other grounds should not be taken against him in his absence but should await his return, so that he may be in a position to defend himself.

28th Report, Cases Nos. 141, 153 and 154, para. 208.

418.

A government decision which requires workers' representatives wishing to attend an international meeting outside the country to obtain authorisation from the authorities in order to leave the country, is not, in the case of members of the Governing Body, compatible with the principle set forth in article 40 of the Constitution of the ILO.

60th Report, Case No. 274, para. 233.